



CITY OF HAYWARD

AGENDA REPORT

Planning Commission
Meeting Date 9/2/99
Agenda Item 1

TO: PLANNING COMMISSION

FROM: Cathy Woodbury, Principal Planner/Landscape Architect
Bashir Y. Anastas, Development Review Services Engineer

SUBJECT: VESTING TENTATIVE MAP TRACT 7065 AND DEVELOPMENT AGREEMENT - RUGGERI-JENSEN-AZAR & ASSOCIATES (APPLICANT), GORDON E. OLIVER & ALDEN OLIVER TRUSTS (OWNERS) - Request to subdivide approximately 251 acres into 538 single-family residential lots, 22 commercial/light manufacturing lots, 2 neighborhood parks and a sports park; and approval of a Development Agreement.

The site is located on Hesperian Boulevard between Industrial Boulevard and Old Alameda Creek.

RECOMMENDATION:

That the Planning Commission refer this item to the City Council with a recommendation that the proposed project is consistent with the Specific Plan, Program EIR and adopted mitigation measures, and to approve the vesting tentative tract map and development agreement.

DISCUSSION:

Background

The South of Route 92 Specific Plan was initiated following the City Council's adoption of the 1993 Growth Management Element, which provided that the final location of the Urban Limit Line would include this part of the City unless a Specific Plan application for such area was approved before January 1, 1997. The City Council later extended the deadline to enable the Specific Plan process to be completed.

The *South of Route 92/Oliver & Weber Properties Specific Plan and Development Guidelines* adopted by City Council on February 17, 1998 provide a comprehensive set of plans, policies and implementation measures for development and conservation within the South of Route 92 area. Concurrent with adoption of the Specific Plan, the General Plan was amended to reflect the new land uses. In addition, the Zoning Ordinance was amended to add new zoning districts and regulations, and the area was rezoned and pre-zoned to facilitate a mixed development of business park, light manufacturing, retail and residential uses along with land for parks and open space.

In addition to approval of the Specific Plan, the program Environmental Impact Report was certified with a statement of overriding considerations based on the economic and social benefits of the Specific Plan proposal.

Voter approval of the Specific Plan was required for the change in land use designation of the Oliver West and Weber properties due to their former designation on the General Plan Map for Open Space-Baylands use. The change in land use designation was approved by the voters in the fall of 1998. A further step in the implementation process was to annex the Oliver East parcel into the City of Hayward. In May, 1999, the Local Agency Formation Commission (LAFCO) approved the annexation. The vesting tentative map is proposed as the next step in implementing the Specific Plan.

The Planning Commission's responsibility is to make a recommendation to the City Council whether the project is consistent with the program EIR, the vesting tentative map and development agreement are consistent with General Plan and Specific Plan, and to review the vesting tentative tract map and conditions. Should the application be approved, the project sponsor will prepare improvement plans and a final map to be approved by the City Engineer. Subsequent site plan approvals by the Planning Commission will be required for the development of each site.

Surrounding Uses

This tentative map includes lands known as Oliver East and Oliver West, and City of Hayward property within the area of the *South of Route 92/Oliver Weber Properties Specific Plan*. The project area is generally bounded by Hesperian Boulevard to the east, Old Alameda Creek to the southeast, Industrial Boulevard to the north, Wildlife Conservation Board (WCB) lands to the west, and Cargill Salt Company lands to the south.

The site is surrounded on the north, east and southeast predominantly by industrial uses. The Pepsi bottling plant is directly across Hesperian Boulevard. Immediately across Old Alameda Creek in Union City is a Kaiser medical office building with an array of light industry and offices beyond, housed in one-story structures. The WCB is planning to restore and enhance the tidal marsh seasonal wetlands on their 835-acre parcel to the west, known as Eden Landing Ecological Reserve. Cargill maintains active salt production ponds on their property.

Vesting Tentative Tract Map

The tentative map was reviewed by staff and was found to be in conformance with the project's approved Specific Plan and Development Guidelines. Much of the discussion below is reflected in these documents and the program EIR.

Subdivision Layout/Site Circulation

Access to the property is provided by two primary collectors connecting to Hesperian Blvd. and Industrial Boulevard. Street "A" is an east-west collector that extends from the Hesperian Blvd/Tripaldi Way intersection and terminates at a roundabout in the residential tract near a 5-acre neighborhood park. Street "B" is a north-south collector serving the commercial development and connects Industrial Blvd. with a minor collector (Street "C") serving the southerly end of the commercial development and the Sports Park. The intersections of Streets "A" and "C" on Hesperian and the intersection of Street "B" on Industrial will be signalized.

Since the easterly portion of Street "A" (east of the business park roundabout) provides access to the entire development, it will have four lanes of traffic. All other streets in the development will have two lanes of traffic with monolithic or meandering sidewalks. On-street parking is prohibited in the commercial development. The CC&Rs for the residential development will restrict on-street parking of recreational vehicles, trailers or trailer-hauled boats, or their storage/placement within front yards or on driveway aprons of all properties. On-street parking of such vehicles will be limited to loading and unloading purposes only.

The street layout within the residential tract discourages speed and cut-through traffic by incorporating several cul-de-sacs and minimizing long straight roadway sections. All of the street cross-sections proposed are consistent with the Specific Plan for the development, including the provisions for an at-grade railroad crossing emergency access and installation of the Bay Trail through the development.

Grading and Drainage

The existing levees within the project boundary do not meet the minimum requirements of the National Insurance Program regulations for flood protection purposes. The proposed project will improve these levees sufficiently to remove the property from the Special Flood Hazard Area (SFHA). Levee improvement and/or floodwall construction will be subject to the approval of the Federal Emergency Management Agency (FEMA) and Alameda County Flood Control District. The project conditions include the requirement that a Conditional Letter of Map Revision based on fill (CLOMR-F) signifying FEMA's consent to remove the property from SFHA will be required prior to recordation of the first final map.

The elevation of finished grades for the tract would require a significant amount of import fill. The applicant currently has a stockpiling permit from Alameda County, but will be required to obtain a City grading permit before importing over two million cubic yards of fill that will be needed to achieve the proposed finished grades.

Grading and development of the site will result in a significant increase in water run-off from the site. Therefore, the project conditions include all of the mitigation measures required by the project EIR. These include construction of a new pumping station on-site, and a new drainage transmission line carrying existing run-off from an Alameda County Flood Control District pumping station that will be abandoned.

Utilities

Water and sewer service will be provided to the project by the City of Hayward subject to the attached infrastructure improvement requirements. These include installation of water and sewer mains, and installation of a sewer lift station and force main (the pressurized outflow pipe from the pump), as needed.

Noise

The project plans provide for the installation of soundwalls along the railroad tracks adjacent to the residential development. It is likely that the lower part of the soundwalls along the railroad and the drainage channel will also serve as floodwalls. The conditions of approval include the requirement that a noise study specify the details of constructing the wall around the emergency access/at-grade railroad crossing.

Buffer Zone

A 100-foot wide buffer zone is proposed along the west and north property lines of the residential tract to provide protection of the habitat to the west and wetlands to the north from trespass of people and domestic pets. The bottom of the buffer will be approximately 4 feet below sea level, and the top of its side walls will have an elevation of at least 3 feet above sea level. The buffer will have salt water to a minimum depth of 3 feet at all times, and a minimum water surface of 50 feet. The buffer area will be landscaped with screening vegetation, primarily native grasses and shrubs, as determined in the Habitat Mitigation Plan.

The conditions of approval vest with the City oversight responsibility for the buffer operation and maintenance, and the ability to modify the specifications for any buffer-related contracts as is deemed appropriate or necessary. The operation and maintenance costs of the buffer will be paid by a maintenance district covering both the residential tract and the business development.

Bay Trail

The California Department of Fish and Game plans to extend the Bay Trail through the Eden Landing Ecological Reserve to the pedestrian bridge proposed over the project's water buffer. The bridge will be located opposite the 5-acre neighborhood park, which will include a Bay Trail staging area. The trail will continue through the residential area, over the Street "A" overpass, along Street "B", and into the Sports Park connecting to Hesperian Boulevard. An additional staging area will be provided within the Sports Park. The Bay Trail continuation is consistent with the intent of the Specific Plan and was developed in consultation with the Association of Bay Area Governments and the East Bay Regional Park District.

Infrastructure Maintenance

The project includes certain infrastructure features that are unique to the development. These will be maintained in a manner that minimizes the impacts of the development on the City's services. Development financed maintenance items include the buffer, the pumping station, landscaping, and the two parks. The conditions of approval require that maintenance funding mechanisms be established to finance the maintenance of the development's infrastructure.

Development Agreement

The Development Agreement includes a provision requiring the developer to fund the design and construction of a 25-acre sports park that will provide the community with a variety of recreational opportunities not found in the area. It is anticipated that the final design will include lighted game courts and ball fields for informal and league activities, a concession building, restrooms and shade structures, parking and a perimeter bicycle path. The sports park will be completed by September 1, 2001, and granted to the City. Operation and maintenance of the facility will be undertaken by HARD.

The Development Agreement also provides a 10-year time frame for completion of the entire development as delineated in the tentative map and conditions of approval. A 5-year extension of time may be granted as outlined in the agreement.

Conformance with the General Plan, Specific Plan, Zoning Districts & Development Guidelines

The tract map and conceptual plans conform with the land use designations, zoning district regulations and Development Guidelines adopted with the Specific Plan.

Environmental Review

The proposed project is consistent with the Specific Plan, Development Guidelines and Mitigation Monitoring and Reporting Program. The proposed project and circumstances have not changed from those examined in the program EIR and no new mitigation measures are required; accordingly, additional environmental study is not required.

Conditions of approval require that improvement plans and project development adhere to all the mitigation measures described in the Mitigation Monitoring and Reporting Program. The tentative map is consistent with the following mitigation measures, which are appropriate at this phase of implementation.

Mitigation Measure 3.1.3-1. The tract map includes the modifications to the turn lanes required at the intersection of Hesperian and Industrial Boulevards, and the signalization required at Hesperian Boulevard and Tripaldi Way.

Mitigation Measure 3.1.4-2. The project is consistent with this mitigation measure in that it provides physical and visual unification of parcels throughout the plan area through landscaping, pedestrian/bike trails and sidewalks. The Bay Trail extends from the neighborhood park in the Oliver West parcel, over the railroad overpass on Street "A", to the Oliver East parcel and the Sports Park.

Mitigation Measure 3.1.7-2. The project is consistent with this mitigation measure in that the required traffic signal control devices will be installed with the first phase of tract improvements and the funds necessary to purchase fire-fighting apparatus will be deposited with the City prior to recordation of the Final Map. In addition, the tract map includes a secondary emergency vehicle access that meets the Fire Department's requirements, and the public roadways and cul-de-sacs meet the Department's turning radius standards.

Mitigation Measure 3.1.7-3 requires the project sponsor and Hayward Unified School District to agree to full facility mitigation for additional classroom and typical support facilities prior to Tentative Tract Map approval. The School District and the project sponsor have entered into an agreement, attached for reference, whereby the developer will pay school impact mitigation fees of \$2.84 per square foot for each residential unit, and \$.30 per square foot for commercial space. This amount exceeds the standard school impact fee of \$1.93 per square foot for residential development.

Mitigation Measure 3.1.8-1. An environmental site assessment was performed for the entire project area to identify if, and to what extent, hazardous materials are located on this site. A remediation plan is being prepared for the approval of Alameda County Health, Regional Water Quality Control Board and the City of Hayward Fire Department. Environmental clearances for each site will be obtained prior to the start of construction on that parcel.

Mitigation Measure 3.1.8-3. The lot layout is consistent with the requirement to construct new buildings at least 100 feet from the railroad tracks.

Mitigation Measure 3.2.3-1. A wetlands delineation report has been prepared and submitted to the Army Corps of Engineers for determination of jurisdictional wetlands. The Corps has conducted a site visit, however, a final determination has not been made to date.

Mitigation Measure 3.2.3-3. A mitigation plan for the wetlands is being prepared and will be submitted for approval by the relevant agencies prior to approval of improvement plans and recordation of the first final map.

Mitigation Measure 3.2.5-3. The tract map indicates a sound wall along the residential property boundary common to the railroad right-of-way and an extension along the north and south property boundaries for a distance of about 150 feet.

Public Notice


On January 5, 1999, a referral notice regarding the proposed project was mailed to property owners and occupants within 300 feet of the project boundaries, agencies, and to known interested parties. A public hearing notice was published in the "Daily Review" on June 26, 1999 and mailed to the surrounding property owners and residents and to interested parties. Nine letters, included in Exhibit F, were received regarding the project. Citizens raised issues regarding the water buffer, jurisdictional wetlands, impacts on Alameda Creek

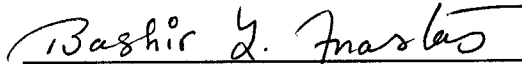
and surrounding wetlands, traffic, proximity to hazardous materials, permitting process, details of the tract map and drainage systems. These issues are addressed in the discussion of mitigation measures above, and in the Vesting Tentative Tract Map section of this report.

Conclusion

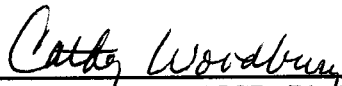
The proposed vesting tentative map is consistent with the adopted Specific Plan, Development Guidelines and program EIR. Approval of the map and development agreement is the next step in implementation of the South of Route 92 Specific Plan, which will result in significant benefits to the community. A 25-acre sports park will be improved and granted to the City to provide regional recreation facilities. A variety of 538 single-family houses will provide home ownership opportunities consistent with the goals contained in the City's Housing Element. Finally, approximately 90 acres of business park and light manufacturing will create a campus environment that supports the policies in the Economic Development Element.

Prepared by:

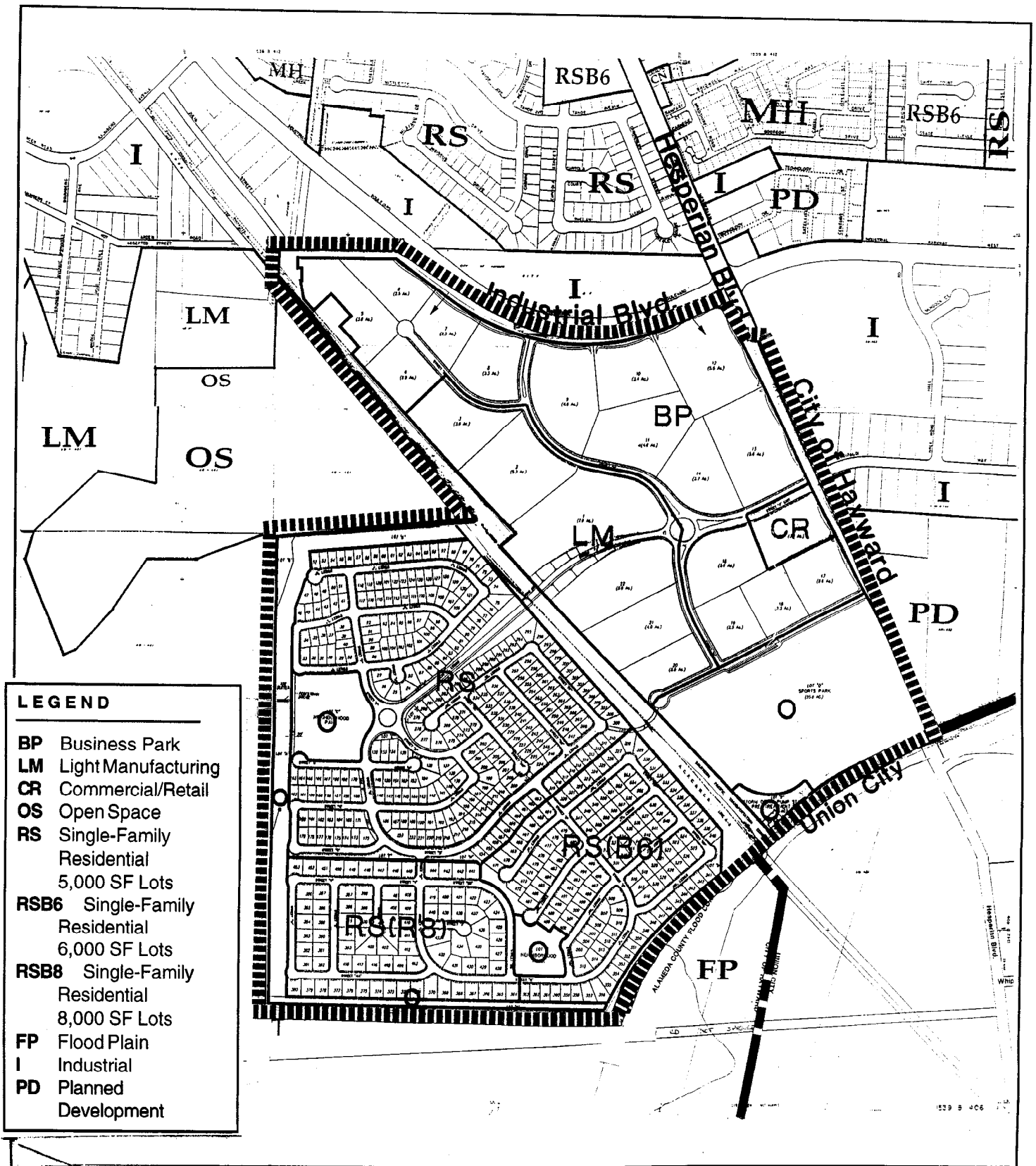

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Principal Planner/Landscape Architect


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Development Review Engineer

Recommended by:


for Dyana Anderly, AICP, Planning Manager

Attachments: A - Zoning/Area Map
B - Findings
C - Conditions
D - Development Agreement
E - School Agreement
F - Correspondence
G - Environmental Factors Evaluation
H - Mitigation Monitoring Plan and Reporting Program
Vesting Tentative Map Tract 7065 & Conceptual Project Plans



ZONING/AREA MAP ■ VESTING TENTATIVE MAP TRACT 7065

Mt. Eden Business and Sports Park Community

Morey Greenstein, Trustee - Oliver Estate Trust (Applicant)

Morey Greenstein, Trustee; Gordon E. Oliver and Alden Oliver Trusts (Owner)
28905 Hesperian Blvd.

ATTACHMENT A

FINDINGS FOR APPROVAL OF VESTING TENTATIVE MAP TRACT 7065

Based on the public hearing record, the Planning Commission finds as follows:

- A. The tentative tract map and the proposed site plan are in substantial conformance with the State Subdivision Map Act.
- B. The tentative tract map and the proposed site plan substantially conform to the City's Subdivision Regulations, the General Policies Plan, and the South of 92 Specific Plan.
- C. The design of the subdivision and the proposed improvements are in conformance with the conditions of approval and will not conflict with easements for access through, or use of, property within the subdivision.
- D. None of the findings set forth in Section 66474¹ of the Subdivision Map Act have been made, and the approval of the tentative map is granted subject to the recommended conditions of approval.
- E. Development of the lots in conformance with the proposed conditions of approval and in compliance with City codes will mitigate any environmental or other impacts.
- F. The site is physically suitable for the type of development proposed, and upon implementation of the conditions of approval, the streets and utilities would be adequate to serve the development.

¹ The findings of Section 66474 set forth the grounds for denial of a tentative map which are as follows:

- (a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
- (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
- (c) That the site is not physically suitable for the type of development.
- (d) That the site is not physically suitable for the proposed density of development.
- (e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- (f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- (g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property with the proposed subdivision.

**FINDINGS FOR APPROVAL
DEVELOPMENT AGREEMENT
VESTING TENTATIVE MAP TRACT 7065**

1. The proposed development agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan and The South of Route 92, Oliver/Weber Properties, Specific Plan in that economic opportunities will be created for new businesses and the project will provide the social benefits of homes, parks and recreation facilities;
2. The proposed development agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use districts in which the real property is located in that the project includes a mixed development of business park, light manufacturing, retail and residential uses along with parks and open space as outlined in the zoning district requirements;
3. The proposed development agreement is in conformity with the public convenience, general welfare and good land use practice in that the agreement provides a 10-year time frame for completion of the entire development as delineated in the tentative map and conditions of approval;
4. Existing or proposed public facilities have sufficient capacity to accommodate the proposed development in that infrastructure improvements will be completed by the project sponsor and connections to utilities and storm drain systems are available in close proximity to the site;
5. The public health, safety, and general welfare will be promoted and advanced by the proposed development in that traffic will be controlled through street layout and installation of traffic signals, bicycle paths and lanes will be provided, homes will be constructed at least 100 feet from the railroad, environmental clearance relative to hazardous materials will be obtained prior to starting construction, and the project includes construction of two neighborhood parks, extension of the Bay Trail and a 25-acre community sports park;
6. The orderly development of property and the preservation of property values will be promoted and advanced by the proposed development in that development will occur along two established arterial roadways across from developed properties, and the proposed uses and physical layout of the development are consistent with the applicable zoning district requirements; and
7. The proposed project is consistent with the Specific Plan, Development Guidelines and Mitigation Monitoring and Reporting Program in that the proposed project and circumstances have not changed from those examined in the program EIR and no new mitigation measures are required, therefore, additional environmental study is not required.

CONDITIONS OF APPROVAL FOR VESTING TENTATIVE MAP TRACT 7065

These conditions apply to the approval of Vesting Map Tract 7065, subdividing 251.53 acres into 538 residential lots (307 lots in the RS zone, 141 lots in the RSB6 zone, and 90 lots in the RSB8 zone), and 22 Business Park lots.

Unless otherwise stated, all necessary easements and street rights-of-way shall be dedicated, and all improvements shall be designed and installed at no cost to the City of Hayward.

All improvements shall be designed and constructed in accordance with the City of Hayward Municipal Code (Chapter 10, Article 3, and Standard Specifications and Details) unless otherwise indicated. Maintenance responsibility for public and other common facilities shall be as specified herein.

In addition to the City of Hayward Standard Specifications and Details, the following documents are incorporated herein by reference:

- (i) South of Route 92 Oliver/Weber Properties, Specific Plan, dated January 30, 1998- "Specific Plan";
- (ii) South of Route 92 Oliver/Weber Properties, Development Guidelines, Final Draft dated February 4, 1998- "Development Guidelines";
- (iii) South of Route 92 General Plan Amendment and Specific Plan, Oliver/Weber Properties, Draft Mitigation Monitoring and Reporting Program, dated January, 1998- "Mitigation Monitoring Program";

I. Conditions Applicable to the Entire Development

PRIOR TO APPROVAL, OR THE RECORDATION OF THE FINAL MAP

1. Prepare a Habitat Mitigation Plan prior to the recordation of the first final map. The Plan mitigation measures shall be implemented as conditions of approval for the development.

Dedications and Easements

2. The final map shall:
 - a. Dedicate all designated public streets to the City of Hayward, based on right-of-way standards depicted on the face of the map. Street cross-sections and curb returns shall conform to the Specific Plan and Development Guidelines.
 - b. Dedicate to the City of Hayward a minimum 20-foot-wide Emergency Vehicle Access that connects to an easement provided across the Union Pacific Railroad and the Alameda County Flood Control Channel.

- c. Dedicate to the City of Hayward a 6-foot-wide public utility easement, parallel to and abutting the public street right-of-way, along the frontage of the residential lots only. If a sanitary sewer force main is included in the improvement plans, a minimum 20-foot wide sanitary sewer easement shall be dedicated along the force main alignment.
3. Prior to the approval of the final map, all documents that need to be recorded with the final map shall have been approved by the City Engineer and any unpaid invoices or other outstanding charges accrued to the City for the processing of the subdivision application shall be paid.

Subdivision Agreement

4. The developer shall enter into a subdivision agreement with the City of Hayward and post security to secure the construction of the public improvements per Section 10-3.332, *Security for Installation of Improvements*, of the Municipal Code.
5. The developer shall provide liability insurance per Section 7-2.41, *Responsibility for Accidents, Liability Insurance*, of the Municipal Code.
6. An agreement with the Hayward Unified School District for full facility mitigation for additional classroom and typical support facilities within the school District shall be required.

Development and Dedication of Sports Park

7. Development of the South of 92 Specific Plan Area, as approved by the voters of the City of Hayward, call for the development of a 25-acre Sports Park at the southern end of the Oliver East parcel. Pursuant thereto, the Developer has agreed to the following implementing conditions, which are hereby imposed as conditions for approval of the vesting tentative map:
 - a. The Developer shall grant 25 acres to the City for the Sports Park in exchange for the City's approximately 12-acre parcel, as described in the Specific Plan. Such exchange shall occur upon substantial completion of the Sports Park. The Developer shall be responsible for filling the 25-acre site to final grade elevations in the first phase of grading, and preparing the parcel for development, and shall bear all costs associated with such.
 - b. The City shall select a firm to design the Sports Park. The Developer shall be responsible for funding all costs associated with the design.
 - c. During Phase 1 of the Development, the Developer will construct the Sports Park to completion, consistent with the City-approved design. The Developer will deliver the Sports Park, fully built and operational, to the City on or before September 1, 2001. Certificates of Occupancy for Phase III (residential development) shall not be issued until the Sports Park is substantially complete. The value of the Sports Park improvements (including design costs) shall be at least 3 million dollars exclusive of the site preparation work described in (ii) above.

City may allow access to the City's 12-acre parcel for construction of improvements after Developer has provided proof of commercial general liability, automobile and workers' compensation insurance, and entered into a hold harmless agreement that is satisfactory to the City Attorney.

Public Improvements

Permitted Phasing of Improvements

Sequencing of development in five phases as depicted by the Phasing Plan submitted with the tentative map and the filing of multiple final maps shall be permitted. Phasing may proceed in any order after Phase I improvements are substantially complete, as determined by the City Engineer. Phase-specific public improvements shall be constructed with each phase; except for certain designated development-wide public improvements, which shall be as follows:

8. The following improvements shall be designed and constructed with Phase I of the project (improvement plans shall be submitted and approved prior to approval of the first final map):
 - a. All Industrial Boulevard improvements, including undergrounding of utilities and median landscaping;
 - b. All Hesperian Boulevard improvements between Industrial Boulevard and Old Alameda Creek including undergrounding of utilities, median landscaping, intersection improvements at Hesperian Blvd and Industrial Blvd, and the signals at Hesperian Blvd and Street "C" and at Hesperian Blvd and Tripaldi Way / Street "A";
 - c. Entry monumentation at Street "A" and Hesperian Boulevard;
 - d. All Public Service Easement (PSE) improvements along Hesperian Blvd between Street "A" to Old Alameda Creek;
 - e. Street "A" including landscaping and roundabouts between Hesperian Blvd and the 5-acre park;
 - f. Street "B" from Street "A" to Street "C";
 - g. Street C, including the adjoining Sports Park on-street and on-site parking, and the PSE on the southern side of Street "C";
 - h. Street "E", including the adjoining Sports Park on-street and on-site parking, and PSE landscaping on the south side of Street "E";
 - i. Emergency vehicle access (EVA) route across the UP/SP railroad tracks;
 - j. Street "G", with internal trail system, to EVA;
 - k. The buffer along the west property line, to include accessory structures, facilities, or equipment necessary for buffer operation;
 - l. Storm drain pump station and storm drain pipe between abandoned storm drain location and new pump station.

- m. The sewer lift station, force main, and maintenance roadway, if required;
 - n. The 5-acre park, buffer area, and related improvements;
 - o. Traffic preemption emitters at signalized intersections, as required by these conditions; and
 - p. The 12-inch water main in Street “B” looped to Industrial Blvd.
9. Construction of Street “B” from Industrial Boulevard to Street “A”, including the signal at Industrial Blvd, shall be required at the earliest of the following:
- Before a business park user occupies a parcel with primary access on Street B; or
 - By the 7th year of development; or
 - Before a building permit is issued for the 300th housing unit.
10. Public Service Easement (PSE) landscape improvements shall be installed along the full block face on that side of the street where development of any lot occurs within the Business Park Development.

Street Improvements

11. Provide a free eastbound-to-southbound right-turn lane at the intersection of Hesperian Boulevard and Industrial Boulevard. In addition, modify the northbound approach to provide two left-turn lanes, two through-lanes, and one combination through and right lane. Modify the southbound approach to provide two left turn lanes, one through lane and one combination through and right-turn lane. Modify the westbound approach to have one left turn lane, two through lanes and one right turn lane.
12. Install traffic signals at the following intersections:
- Hesperian Boulevard and Tripaldi Way / Street “A”;
 - Industrial Blvd and Street “B”; and
 - Hesperian Boulevard and Street “C”.
13. Install public street improvements in accordance with the approved Tentative Map. No on-street parking shall be allowed within the Business Park development except as may be provided for the Sports Park on proposed Street “E”. The Developer shall install “No Parking” signs, as approved by the City Engineer.
14. Construct a 14-foot-wide paved access roadway with 3-foot-wide level shoulders for maintenance purposes alongside the sanitary sewer force main – if applicable.
15. Install bike lanes (including signing, striping and pavement marking) along the designated streets within the tract, as specified in the Development Guidelines.
16. Install a 10-foot-wide meandering pedestrian and bicycle path along Hesperian and Industrial Boulevards.

17. Street lighting shall be provided per City Standard SD-120, as approved by the City Engineer. Public street lighting, lighting in the business park and industrial areas, and in the Sports Park, shall be focused downward and/or shielded to avoid glare and sources of light interfering with the vision of residents and motorists on local roadways. All street lights shall become the property of the City of Hayward and shall be constructed under LS-2A Tariff.
18. Bus shelter and/or bus stop locations shall be included in the improvement plans, as approved by the City Engineer and AC Transit.

Utilities

19. The Developer shall underground all utility lines and transformers. All utility services shall be "underground services", and shall comply with the requirements and standards of the utility provider.
20. The East Bay Dischargers Authority shall approve any use of its easement, including grading and landscaping within the easement, prior to approval of the improvement plans.
21. The standard water main location shall be 5 feet from the face of curb. The minimum separation between a water service line and a sanitary sewer lateral shall be 6 feet, and between the sanitary sewer main and the water main shall be 10 feet. Water meters shall be a minimum of 2-foot clear of top of driveway flare.
22. Sanitary sewer connections shall be subject to demonstrating that adequate capacity is available at the point of connection, as approved by the City Engineer. Sanitary sewer mains within easements that extend to a distance of more than 150 feet shall have an all-weather driving surface, and include automatic electronic opening devices if gates are used.
23. Provide water main easement connections between the following two locations: Streets S & "V" and Lots 328 & 329; or demonstrate the adequacy of the connections proposed, to the satisfaction of the City Engineer.
24. The property owner shall provide keys/access code/automatic gate opener to utilities for all meters enclosed by a fence/gate as per Hayward Municipal Code 11-2.02.1.
25. Operation of valves on the Hayward Water System shall be performed by City of Hayward Water Distribution Personnel Only.
26. Sanitary sewer mains shall be located in the centerline of each street, except as approved by the City Engineer.

Fire Protection

27. Provide calculations to show proposed water mains are adequate to supply required fire flows. Fire hydrants shall be spaced a maximum of 400 feet apart for the residential area, and 300 feet apart elsewhere, and provide a minimum of 1500 gallons per minute at 20 pounds per square inch. The buried water supply pipe must meet NFPA 24 Chapter 8 "Private Fire Service Mains and their Appurtenances."

28. Prior to approval of the first final map, deposit \$650,000.00 with the City, for the purchase of needed firefighting apparatus and equipment and installation of traffic preemption emitters at signalized intersections between responding stations Nos. 4, 6, and 7 and the project site, as approved by the Fire Department.
29. Secondary and emergency vehicle access roads/evacuation route(s) shall meet all Fire Department requirements including being 20 feet in width and unobstructed, having an all weather driving surface engineered to 50,000 pound G.V.W., and shall contain Department approved automatic electronic opening devices if gates are used.
30. Install remote control access gates at both ends of the Emergency Vehicle Access across the Union Pacific Railroad and the Alameda County Flood Control Channel.

Drainage

31. Incorporate runoff control design in the drainage collection system for the project, and submit reports or plans that include the following.
 - a. Detailed, site-specific hydrologic and hydraulic analyses for the proposed development areas, to validate the drainage calculations for the Specific Plan Area as a whole shall be required. The analyses shall be in conformance with City of Hayward and ACFCDD standards, shall quantify the proposed development area's increased stormwater runoff volumes, and shall quantify the effect on the capacity of the existing drainage facilities, including the levees along Old Alameda Creek.
 - b. A design for the proposed additions to the storm-drainage that accommodates the anticipated flows from the Specific Plan Area, to facilities in the storm-drain infrastructure that would avoid increasing the risk of offsite flooding or increasing the area of 100-year water surface. Such facilities could include detention or storage structures.
 - c. A flood plain study that evaluates alterations in floodwater characteristics, including depth, extent and velocity, caused by the addition of fill, and stipulating measures (such as diversion of waters or raising of levees) to protect adjacent occupied areas, as required by the Federal Emergency Management Agency and the City of Hayward. A CLOMR (Conditional Letter of Map Revision) shall be required prior to approval of the first final map.
32. Construct a new storm drainage pumping station serving the development and incorporating flows from the existing pumping station to the north. The Developer shall be responsible for 100% of the cost of constructing the station unless cost-sharing is agreed to by Alameda County Flood Control District.
33. Abandon the existing A-2 Storm Water Pump Station north of the site and extend a transmission line to the new Pump Station on site:
 - a. Establish a maintenance district or other financing method acceptable to the City to fund the maintenance of the on-site drainage pumping station; and

- b. Incorporate the maintenance of the new drainage transmission line (connecting to the new pump station location) in the Maintenance District, or otherwise defray the maintenance cost of the new drainage line to the satisfaction of the City Engineer and Alameda County Flood Control District.

Alameda County Flood Control District shall own both the new transmission line along the A-2 channel and the pumping station and pretreatment pond.

- 34. If a drainage maintenance district is to be formed, deposit \$18,000.00 with the City of Hayward for the formation of the drainage maintenance district prior to the approval of the first final map. A written disclosure of the special assessment district including an estimate of the annual assessment shall be provided to potential buyers.
- 35. The storm drainage system shall be designed to both intercept and provide capacity for storm water entering the project from off-site properties.
- 36. The drainage system shall be reviewed and approved by the Alameda County Flood Control and Water Conservation District.
- 37. All on-site storm drain inlets shall be labeled "No Dumping - Drains to Bay" using City approved methods.

Buffer Design, Bay Trail, Aesthetics and Landscaping

- 38. Detailed landscape improvement plans shall be prepared by a licensed landscape architect for the following areas: all Public Services Easements (PSE), medians and roundabouts on Streets "A", "B" and "C"; medians on Industrial and Hesperian Boulevards; the side slopes and common areas adjacent to West Street "A". Landscaping and irrigation plans shall comply with the City's *Water Efficient Landscape Ordinance* and the *South of Route 92 Development Guidelines*, and the conceptual landscape plans accompanying the vesting tentative map.
- 39. Install a 100-foot-wide open space (water) buffer consistent with the project EIR, Mitigation Monitoring Program, and Habitat Mitigation Plan.
 - a. Create a 50-foot-wide channel within the buffer zones to serve as a water barrier. Design of the channel within the buffer zone shall permit circulation for water quality and mosquito abatement.
 - b. The plans for the channel and buffer treatment shall be acted upon by the City after approval of the plans by other agencies with jurisdiction.
 - c. Precise location and timing of pedestrian bridge construction over the buffer shall be coordinated with the design of the 5-acre neighborhood park in conjunction with the State Department of Fish and Game and the East Bay Regional Park District.
 - d. A security for buffer construction shall be required. The security shall be in the amount of at least 150% of the engineer's cost estimate for the facility, and shall be maintained for a period of not less than 24 months and not more than 36 months after completion of construction, as approved by the Director of Public Works. During the maintenance period, the security shall serve to guarantee satisfactory operation of the facility.

- e. Incorporate the costs for the maintenance and operation of the buffer, buffer bridge, and gate structure in the Drainage Facilities/Pumping Station Maintenance District or other approved maintenance funding mechanism, as approved by the City Engineer.
 - f. Developer shall be responsible for buffer operation and maintenance for a period of not less than 24 months and not more than 36 months after completion of buffer construction and demonstrated satisfactory performance, as approved by the Director of Public Works. Thereafter, the City shall have responsibility for award of maintenance contracts for buffer operation and maintenance in the context of the Maintenance District. Buffer-related operations and maintenance specifications shall be subject to initial peer review, and subsequent review and modification by the City. The specifications shall include provisions for annual reporting to the City of the buffer's operation to include financial and administrative status reports, and reports regarding the technical efficacy and soundness of the buffer operation. The City shall have the ability to review and approve the award of any buffer-related maintenance contracts.
- 40. Pursuant to Mitigation Measure 3.1.4-4 of the General Plan Amendment and Specific Plan Mitigation Monitoring Program, the buffer along the west property line shall be designed in a manner that avoids monotony to improve its appearance within the residential subdivision. Buffer design should be integrated and consistent with the overall plan for informal landscape development within the residential portion of the Specific Plan area to reduce the visual impact of uniform buffers.
 - 41. Landscape, with screening native vegetation (native grasses and shrubs), the 100-foot wide buffer zone between residential areas and all adjacent habitat on State of California lands to the west and wetland to the north.
 - 42. Provide sufficient variation in the layout of plant materials to visually blend the railroad overcrossing into the landscape development program.
 - 43. Install signs and directional markers for the Bay Trail, as approved by ABAG and the East Bay Regional Park District.
 - 44. Construct a project monument sign at the southwest corner of Industrial and Hesperian Boulevards, and develop this corner with extensive landscaping, as approved by the City Landscape Architect.

PRIOR TO GRADING

- 45. Prepare a wetland mitigation plan for approval by agencies having jurisdiction. The mitigation plan shall be consistent with the Specific Plan Mitigation Measure 3.2.3.
- 46. A grading permit shall be required for any site grading prior to approval of the subdivision improvement plans. Grading plans shall conform to the preliminary soils report.

47. Implement the following dust control measures at all construction sites, as directed by the City Engineer:
- a. Water all active construction areas twice daily, or as required.
 - b. Cover all trucks hauling soil, sand and other loose materials or require all trucks to maintain at least 6 inches of freeboard. A more restrictive freeboard standard may be imposed if streets are not maintained to the satisfaction of the City.
 - c. Pave, apply water as necessary, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
 - d. Sweep daily with water sweepers, as required, all paved access roads, parking areas and staging areas at construction sites.
 - e. Sweep adjacent public streets and haul routes as necessary (with water sweepers), to remove any construction-related material. Specifically, medians on Mission Blvd and Industrial Blvd shall be cleaned as required during hauls from La Vista quarry.
 - f. Hydroseed or mulch at a rate of two tons per acre all inactive construction areas during the rainy season, or graded areas that remain inactive for ten days or more, as required.
 - g. Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.).
 - h. Limit traffic speeds on unpaved roads to 15 mph.
 - i. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - j. Replant vegetation in disturbed areas as quickly as possible.
 - k. Install wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the site, if conditions warrant.
 - l. Install wind breaks, or plant trees/vegetative wind breaks at windward side(s) of construction areas if conditions warrant.
 - m. Suspend excavation and grading activity when winds exceed 25 mph.
 - n. Limit the area subject to excavation, grading and other construction activity at any one time.
48. Provide evidence that a Notice of Intent (NOI) and a Storm Water Pollution Prevention Plan (SWPPP) was filed and received by the State Water Resources Control Board (SWRCB). The SWPPP shall be submitted to the City of Hayward for review and approval by the City Engineer, and shall include grading provisions as follows:
- a. Grading, erosion and sedimentation control plans, which include adequate provisions for silt and erosion control in both construction and post construction phases of development;
 - b. A requirement that no site grading shall occur during the rainy season, between October 15 and April 15, unless approved erosion control measures are in place;

- c. A requirement that filter materials (such as sandbags, filter fabric, etc.) be used at all storm drain inlets prior to: 1) start of the rainy season; 2) site dewatering activities; or 3) street washing activities; and, 4) saw cutting asphalt or concrete, or in order to retain any debris or dirt flowing into the City storm drain system.
- d. A requirement that filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding;
- e. A requirement that if grading or construction are to occur during the wet season, the erosion and sediment control plan shall meet the following objectives:
 - i. The erosion and sediment control plan shall be submitted, reviewed, implemented and inspected as part of the approval process for the grading plans for each phase;
 - ii. The plan shall be designed by the developers' erosion control consultant, using concepts similar to those incorporated in the ABAG Erosion and Sediment Control Handbook, California Storm Water Best Management Practice Handbooks, and the Regional Water Quality Control Board's Erosion and Sediment Control Field Manual, as appropriate; based on the specific erosion and sediment transport control needs of each area in which grading and construction is to occur. Possible methods include, but are not limited to, the following:
 - (a) Grading and related activities shall be confined to the dry season, whenever possible. (e.g. demolition, construction, preparation and use of equipment and material storage areas (staging areas), preparation of access roads, etc.)
 - (b) If grading or activities related to grading need to be scheduled for the wet season, ensure that structural erosion and sediment control measures are ready for implementation prior to the onset of the first major storm of the season.
 - (c) Locate staging areas outside major drainage ways.
 - (d) Keep the lengths and gradients of constructed slopes (cut or fill) as low as possible.
 - (e) Discharge grading and construction runoff into small drainages at frequent intervals to avoid buildup of large potentially erosive flows.
 - (f) Prevent runoff from flowing over unprotected slopes.
 - (g) Keep disturbed areas (areas of grading and related activities) to the minimum necessary for demolition or construction.
 - (h) Keep runoff away from disturbed areas during grading and related activities.
 - (i) Stabilize disturbed areas as quickly as possible, either by vegetative or mechanical methods.
 - (j) Direct runoff over vegetated areas prior to discharge into public storm drainage systems, whenever possible.

- (k) Trap sediment before it leaves the site with such techniques as check dams, sediment ponds, or siltation fences.
 - (l) Make the contractor responsible for the removal and disposal of all sedimentation on-site or off-site, that is generated by grading and related activities of the project.
 - (m) Use landscaping and grading methods that lower the potential for downstream sedimentation. Modified drainage patterns, longer flow paths encouraging infiltration into the ground, and slower storm-water conveyance velocities are examples of effective methods.
 - (n) Control landscaping activities carefully with regard to the application of fertilizers, herbicides, pesticides or other hazardous substances. Provide proper instruction to all landscaping personnel on the construction team.
- iii. During the installation of the erosion and sediment control structures, the erosion control professional shall be on the site to supervise the implementation of the designs, and the maintenance of the facilities throughout the demolition, grading and construction period.
 - iv. The erosion control professional shall prepare an "as built" erosion and sediment control facility map, to be filed with the City, showing details of the permanent elements of the plan and providing an operating and maintenance schedule throughout the operational period of the project.
49. The project plans shall include storm water measures for the operation and maintenance of the project to be approved by the City Engineer. The project plan shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site to effectively prevent the entry of pollutants into storm water runoff.
50. The drainage system design shall use the Hydrology and Hydraulics Criteria Summary, Alameda County Flood Control and Water Conservation District, latest edition, to determine storm drainage runoff. The drainage system shall be designed to accommodate the run-off associated with a 15-year-storm.
51. A registered soils professional shall be on the site:
- a. to observe areas of potential soil unsuitability,
 - b. to supervise the implementation of soil remediation programs, and
 - c. to verify final soil conditions prior to setting the foundations.
52. A traffic control plan shall be developed prior to any filling operations which specifies time of operations, roadway cleaning requirements and responsibilities, roadway maintenance and repair responsibilities, traffic signing and flagging requirements, signal timing adjustments, etc. The City of Hayward shall approve such plan prior to the initiation of any trucking or filling operations. The plan shall be subject to periodic modification at the direction of the City Engineer – as conditions warrant.

PRIOR TO CONSTRUCTION WITH COMBUSTIBLE MATERIALS

53. Required water system improvements shall be completed and operational prior to the start of combustible construction.
54. Emergency vehicle access shall be maintained via a minimum 20-foot-wide all-weather access road with unobstructed vertical clearance of at least thirteen feet, six inches (13' 6"), and shall be engineered for a 50,000 pound gross vehicle weight.
55. All temporary all-weather fire access, where required, shall be maintained until all construction is completed. The permanent fire apparatus access route shall be completed prior to occupancy.

PRIOR TO ISSUANCE OF BUILDING PERMITS

56. Install an eight-foot high masonry block wall or decorative open fence along the southern boundary of the Sports Park, as approved by the Planning Director.
57. Provide a site-specific soil suitability analysis and stabilization procedures, and design criteria for foundations, as recommended by a California-registered soil engineer during the design phase of the Plan Area.
 - a. The minimum static ground failure design standards for all proposed facilities shall conform to City Building Code Standards and applicable portions of the City's policies and ordinances.
 - b. Provide documentation to the City indicating that:
 - i. Site-specific soil suitability analyses have been conducted in the area of the proposed foundation to establish the design criteria for appropriate foundation type and support; and
 - ii. The recommended criteria have been incorporated in the design of foundation.
58. One large educational sign shall be placed in a prominent and visible place in the proximity of the buffer bridge explaining the value of the adjacent biotic habitats and methods for protecting these resources. Catch basins shall be labeled to indicate that they drain into the San Francisco bay.
59. An archival and field study shall be prepared by an historian/archaeologist and its recommendations implemented pursuant to Mitigation Measure 3.1.9-1 of the General Plan Amendment and Specific Plan Mitigation Monitoring Program.
60. A final statement of water main extension costs shall be submitted to the Hayward Water Department prior to application for metered services.

61. Incorporate current seismic-restraint criteria in the design of excavations, foundations and structures for the project, using updated guidelines from the 1997 Uniform Building Code. Incorporate the following measures, as appropriate:
- a. The minimum seismic-resistant design standards for all proposed facilities shall conform to the CBC Seismic Zone 4 Standards and applicable portions of the City's policies and ordinances.
 - b. If additional seismic-resistant earthwork or construction design criteria are recommended by the geotechnical investigations, they shall be incorporated as necessary, based on the site-specific recommendations of California-registered geotechnical and structural engineering professionals, recommended in cooperation with a California Certified Engineering Geologist.
 - c. During site preparation, the registered geotechnical professional shall be on the site to supervise implementation of the recommended criteria.
 - d. The geotechnical consultant shall prepare an "as built" map/report, to be filed with the City, showing details of the site geology, the location and type of seismic-restraint facilities, and documenting the following requirements, as appropriate:
 - i. Engineering analyses shall demonstrate satisfactory performance of existing or re-compacted alluvium and existing or new fill where they form part or all of the support for structures.
 - ii. Access, foundations and underground utilities in fill or alluvium shall be designed to accommodate settlement or compaction estimated by the site-specific investigations of the geotechnical consultant.

DURING CONSTRUCTION

62. A traffic control plan for construction traffic may be required by the City Engineer – as conditions warrant.
63. The following control measures for construction noise, grading and construction activities shall be adhered to, unless otherwise modified or approved by the City Engineer:
- a. Construction activities shall be limited to weekdays between the hours of 7:30 AM to 6:00 PM;
 - b. Grading and construction equipment shall be properly muffled;
 - c. Unnecessary idling of grading and construction equipment is prohibited;
 - d. Stationary noise-generating construction equipment, such as compressors, shall be located as far as practical from occupied residential housing units;
 - e. Designate a "noise disturbance coordinator" who will be responsible for responding to any local complaints about construction noise;
 - f. Daily clean up of trash and debris shall occur on all public streets in the project vicinity and along the fill haul routes;

- g. The site shall be watered as needed to control dust emissions;
 - h. Pave, apply water as necessary, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites; and
 - i. Sweep daily with water sweepers, as required, all paved access roads, parking areas and staging areas at construction sites.
64. Minimize the stockpiling and storage of construction materials and equipment prior to installation and use. Staging areas should be located as close to or within the area of construction as possible, out of the way of community traffic and pedestrian use.
65. Construction recycling plans shall be approved by the City Utilities Division, including information on available recycling programs, amount of recycling, methods to be used and documentation measures.
66. The minimum soils sampling and testing frequency shall conform to Chapter 8 of the Caltrans Construction Manual. The subdivider shall require the soils engineer to submit all testing and sampling and reports to the City Engineer on a bi-weekly basis, unless the City Engineer determines that more frequent submissions are necessary in order to monitor and address issues identified by the City Engineer.

PRIOR TO ACCEPTANCE OF PUBLIC IMPROVEMENTS

67. All tract improvements, including the complete installation of all improvements relative to streets, fencing, sanitary sewer, storm drainage, water system, underground utilities, etc., shall be completed and attested to by the City Engineer before approval of occupancy of any unit. Where facilities of other agencies are involved, such installation shall be verified as having been completed and accepted by those agencies.
68. All common area landscape improvements and site amenities shall be installed prior to acceptance of each phase of residential tract improvements, or occupancy of 80% of the dwelling units in that phase, whichever first occurs.
69. If the pavement in the project vicinity along Industrial and Hesperian Boulevards is damaged as a result of construction traffic, pavement repair/reconstruction or an AC overlay will be required, as determined by the City Engineer.
70. A Letter of Map Revision (LOMR) issued by the Federal Emergency Management Agency shall be required.
71. Submit an "as built" plan indicating the following:
- a. All the underground facilities, sanitary sewer mains and laterals, water services (including meter locations), Pacific Gas and Electric, Pacific Bell facilities, TCI, etc;
 - b. All the site improvements, except landscaping species, buildings and structures; and
 - c. The details of the site soils, the location of foundations, sub-drains and clean-outs, the results of suitability analyses and compaction tests.

II. Conditions Specific to Residential Development

PRIOR TO APPROVAL, OR THE RECORDATION OF THE FINAL MAP

72. Establish a homeowners' association or some alternate mechanism acceptable to the City to maintain the following:

- The 2 ½-acre park; and
- Subdivision entry features and signage;

Landscaping shall be maintained in a healthy, weed-free condition at all times. Landscaping shall be inspected on a monthly basis and any dead or dying plants (plants that exhibit over 30% die-back) shall be replaced within ten days of the inspection. Trees shall not be severely pruned, topped or pollarded. Any trees that are pruned in this manner shall be replaced with a tree species selected by and size determined by the City Landscape Architect, within the timeframe established by the City and pursuant to the Municipal Code.

If an association is formed, each owner shall automatically become a member of the association and shall be subject to a proportionate share of maintenance expenses. The association shall be required to maintain a reserve fund to cover the costs of replacement and repair.

The City shall have the ability to place liens on all properties within the subdivision if the maintenance obligations stipulated above are not fulfilled.

Conditions, Covenants and Restrictions

73. Community Conditions, Covenants and Restrictions (CC&Rs) shall be prepared, reviewed and approved by the Planning Director and City Attorney prior to approval of the first final map. The CC&Rs shall include the following:

- a. A requirement that all pets, including cats, be restrained at all times;
- b. Provisions for strict enforcement of leash laws and other controls on domestic pets;
- c. A restriction against the storage, parking or placement of recreational vehicles, trailers or trailer-hauled boats within front yards or on driveway aprons of all properties. On-street parking of such vehicles shall be limited to loading and unloading purposes only.
- d. A requirement that the garage of each unit be maintained for off-street parking and shall not be converted to living area;
- e. A requirement that individual garbage can(s) and recycling containers be stored within the garage or fenced in side yard area of each dwelling unit except upon pick-up day;
- f. Mechanical equipment, such as air conditioners and heating unit, shall be prohibited on roof-tops;
- g. A requirement that an architectural review committee be established to review and approve all exterior improvements or changes to individual homes to ensure consistency with the CC&Rs;

- h. A requirement that a professional management company be responsible for managing and implementing the CC&Rs;
 - i. Provisions for ensuring that green waste from the common areas and open space areas will be recycled or composted;
 - j. A requirement that property owners shall be required to properly maintain the front yard landscaping and street trees, and replace any dead or dying plant material. Street trees shall not be severely pruned, topped or pollarded. Any trees that are pruned in this manner shall be replaced with a tree species selected by and size determined by the City Landscape Architect, within the timeframe established by the City and pursuant to Municipal Code.
74. Dedicate the 5-acre neighborhood park to the City, and establish a landscaping and lighting maintenance district or other funding mechanism acceptable to the City for park maintenance by HARD.
75. If a landscape and lighting district is to be formed, deposit \$10,000.00 with the City of Hayward for the formation of the landscape and lighting maintenance district prior to the approval of the first final map. In addition to the 5-acre Neighborhood Park, the District shall be responsible for maintaining the following facilities:
- Medians, off-street bike paths, and bus stops;
 - Landscaping within the public right-of-way (including roundabouts), slope easements, and common areas (including the parkway linking the two neighborhood parks), and related irrigation systems; and
 - Graffiti removal for soundwalls and masonry walls.

A written disclosure of the special assessment district including an estimate of the annual assessment shall be provided to potential home buyers in a manner that ensures buyer awareness of the assessment. Such disclosure may be done on brightly colored paper or some other means approved by the Planning Director.

PRIOR TO ISSUANCE OF BUILDING PERMITS

76. A Site Plan Review application shall be submitted for review and approval by the Planning Commission. The submittal shall be consistent with the South of Route 92 Specific Plan and Development Guidelines, City of Hayward Design Guidelines and applicable zoning district requirements.
77. Prepare a detailed noise analysis to identify the noise control treatments necessary to achieve an L_{dn} of 45 dBA or less inside the homes. The analysis shall demonstrate how single-event noise levels from individual railroad trains will be controlled so as not to exceed a maximum instantaneous noise level (L_{max}) of 50 dBA in bedrooms and 55 dBA in other noise sensitive rooms, such as living rooms, dining rooms, kitchens, etc. The analysis shall include recommendations for construction of the wall in the vicinity of the emergency access across the railroad, consistent with standards.

78. For each phase, a street tree plan, and front yard landscape improvement plans shall be submitted for review and approval by the City. Front yards shall be limited to a maximum 50% Fescue turf. One 15-gallon street tree shall be provided on each lot for every 50 feet of frontage, or portion thereof. Trees shall be planted according to the City Standard Detail SD-122.

PRIOR TO CONNECTION OF UTILITIES OR ISSUANCE OF CERTIFICATES OF OCCUPANCY

79. The following fees shall apply:

- a. Water Facilities Fee and Sewer Connection Fee for each dwelling unit at the rate in effect when the utility service permit for the dwelling unit is issued;
- b. Supplemental Building Construction and Improvement Tax; and
- c. Building Construction and Improvement Tax.

The amount of the fee shall be in accordance with the fee schedule in effect at the time of issuance of the building permits.

Provision of the 5-acre neighborhood park, 2-acre private park, and Bay Trail extension and the improvements thereof constitutes full and complete satisfaction of the developer's obligation for parks and recreation pursuant to City requirements.

80. Front yard landscaping and street trees shall be installed according to approved plans prior to occupancy of each lot. A Certificate of Substantial Completion and an Irrigation Schedule shall be submitted prior to the issuance of a Certificate of Occupancy.

III. Conditions Specific to Business Park Development

PRIOR TO APPROVAL, OR THE RECORDATION OF THE FINAL MAP

81. Establish a Commercial Property Owners Association (CPOA) within the non-residential development (or other funding mechanism acceptable to the City) to maintain the following:

- PSE landscaping and landscaping within common areas, and related irrigation systems;

The CPOA shall provide for the inspection of landscaping on a monthly basis and for any dead or dying plants (plants that exhibit over 30% die-back) to be replaced within ten days of the inspection. Trees shall not be severely pruned, topped or pollarded. Any trees that are pruned in this manner shall be replaced with a tree species selected by and size determined by the City Landscape Architect, within the timeframe established by the City and pursuant to Municipal Code.

- Entry features and signage; and
- Fossil Filters (or installed equal).

Each owner shall automatically become a member of the association and shall be subject to a proportionate share of maintenance expenses. The association shall be required to maintain a reserve fund to cover the costs of replacement and repair. The association shall be empowered to review building architecture and service areas per the development guidelines.

The City shall have the ability to place liens on all properties within the development if the CPOA fails to fulfill its maintenance obligations.

82. Establish a landscaping and lighting maintenance district or other funding mechanism acceptable to the City for maintenance of landscaping within the public right-of-way (including medians/roundabouts), slope easements, and related irrigation systems.
83. If a landscape and lighting district is to be formed, deposit \$10,000.00 with the City of Hayward for the formation of the maintenance district prior to the approval of the first final map. A written disclosure of the special assessment district including an estimate of the annual assessment shall provided to potential buyers or lessees.

Conditions, Covenants and Restrictions

84. Commercial Covenants, Conditions, and Restrictions (CC&Rs) shall be prepared, reviewed and approved by the Planning Director and City Attorney prior to approval of the first final map. The CC&Rs shall include the following requirements:
 - A prohibition on cats or dogs (except for guide dogs) from being on the premises;
 - That the CPOA is authorized to strictly enforce the prohibition on domestic pets; and
 - A requirement that an architectural review committee be established to review and approve all exterior improvements or changes to existing structures to ensure consistency with the development guidelines.

Public Improvements

85. All structures shall be equipped with appropriate automatic fire extinguishing sprinkler systems.
86. Install Fossil Filters or equal at all inlets outside the right-of-way within the development.

PRIOR TO ISSUANCE OF BUILDING PERMITS

87. A Site Plan Review application shall be submitted for review and approval by the Planning Commission for each development application. The submittal shall be consistent with the South of Route 92 Specific Plan and Development Guidelines, City of Hayward Design Guidelines and applicable zoning district requirements.
88. Plans shall demonstrate that sufficient facilities are provided on site such that occupants may participate in the City's solid waste recycling program.

89. Detailed landscaping and irrigation plans shall be prepared by a licensed landscape architect. Landscaping and irrigation plans shall comply with the City's *Water Efficient Landscape Ordinance* and the *South of Route 92 Development Guidelines*. The plans shall be reviewed and approved by the City.

PRIOR TO CONNECTION OF UTILITIES OR ISSUANCE OF CERTIFICATES OF OCCUPANCY

90. The following fees shall apply:

- a. Water Facilities Fee and Sewer Connection Fee for each dwelling unit at the rate in effect when the utility service permit for the dwelling unit is issued; and
- b. Supplemental Building Construction and Improvement Tax.

The amount of the fee shall be in accordance with the fee schedule in effect at the time of issuance of the building permits.

91. PSE landscape improvements and on-site landscaping shall be installed according to the approved plans and a Certificate of Substantial Completion and an Irrigation Schedule shall be submitted to the City.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City Clerk
City of Hayward
777 "B" Street
Hayward, California 94541-5007

(Space above this line for Recorder's Use)

MOUNT EDEN BUSINESS AND SPORTS PARK
COMMUNITY DEVELOPMENT AGREEMENT

THIS AGREEMENT ("Agreement") is entered into this _____ day of ____, 1999, by and between THE GORDON OLIVER ESTATE AND TRUST, THE ALDEN OLIVER TRUST, and the CITY OF HAYWARD, a municipal corporation, organized and existing under the Hayward City Charter and laws of the State of California.

RECITALS

This Agreement is entered into based upon the following facts:

A. Each of the capitalized terms used in these Recitals has the meaning defined in Section 1 of this Agreement.

B. Government Code Sections 65864-65869.5 authorize City to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, in order to, among other things: (1) encourage and provide for the development of public facilities in order to support the development of new housing; (2) provide certainty in the approval of development projects in order to avoid the waste of resources and the escalation in the cost of housing and other development to the consumer and encourage investment in and commitment to comprehensive planning which will make maximum efficient utilization of resources at the least economic cost to the public; (3) provide assurance to developers that they may proceed with their projects in accordance with existing policies, rules and regulations, subject to their conditions of approval; and (4) strengthen the public planning process.

C. Owner is the holder of a legal or equitable interest in the Property and intends to develop the Property for a large multi-phase, mixed use development with low-density residential, commercial/retail, business park, light manufacturing, planning/research and development, and open space/park and recreation land uses, all as set forth in the Development Plan. The Development of the Property requires substantial early capital expenditures and

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ATTACHMENT D

investments with respect to the construction and installation of infrastructure and facilities, both on-site and off-site, of sufficient capacity to serve the residents and others using the Property as anticipated by the General Plan, the Specific Plan, the Vesting Tentative Map, and this Agreement.

D. City has determined that the Development Plan implements the goals and policies of City's General Plan and the Specific Plan (as referenced in Government Code Sections 65450 *et seq.*) applicable to the Project and provides appropriate land uses and imposes appropriate standards and requirements with respect to land development and usage so as to maintain the overall quality of life and of the environment within City. City has further determined that the Project as carried out pursuant to the Development Plan will provide benefits and mitigate impacts that exceed those attributable to the Project.

E. The construction of the Sports Park Complex is an amenity which City could not otherwise require as a condition of the Development Approvals and will significantly enhance recreational opportunities for the citizens of City. It is also an amenity that will enhance Owner's ability to market and sell residential units to be developed on the Property. City and Owner intend that in exchange for the conveyance to Owner of the City Property, Owner shall dedicate the area to be developed for the Sports Park Complex to City. City and Owner intend that the Sports Park Complex shall be designed and constructed by Owner at Owner's sole expense but City shall have the right to choose a firm to design the Sports Park Complex and shall have final approval of the design.

F. Pursuant to Government Code Section 65865, City has adopted the Development Agreement Ordinance establishing procedures and requirements for the consideration of proposed development agreements.

G. City has adopted the Existing Development Approvals in order to protect the interests of City's existing and anticipated citizens and the quality of their community and environment through the planned development process. In approving the Development Plan authorized by the Existing Development Approvals, City has analyzed the environmental effects of this Project, certified the EIR, made the necessary findings, and adopted the Mitigation Monitoring and Reporting Program as required by the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*). City has found, pursuant to Resolution 99-___ that the execution of this Agreement is within the scope of the EIR and no new environmental documentation is required.

H. City's staff has reviewed this Agreement, deemed it to be complete, and prepared a report to the Planning Commission pursuant to City Municipal Code Section 10-9.05 regarding this Agreement's consistency with the General Plan and the Specific Plan. The Planning Commission has made the necessary findings set forth in the City Municipal Code Section 10-9.08 and recommended that the City Council authorize execution of a Development Agreement. The City Council has held a public hearing and found and determined that this Agreement: (i) is consistent with City's General Plan and the Specific Plan; (ii) is in the best interests of the health, safety and general welfare of City, its residents, and the public; (iii) is

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Mt. Eden Community Development Agreement

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entered into pursuant to, and constitutes a present exercise of City's police power; and (iv) is entered into pursuant to, and complies with, the requirements of Section 65867 of the Development Agreement Legislation and with the Development Agreement Ordinance.

I. City has adopted Ordinance No. 99-__ on September 7, 1999 approving this Agreement and its execution in accordance with the provisions of the Development Agreement Legislation and the Development Agreement Ordinance.

Based on the foregoing, Owner and City desire to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing recitals of fact, the mutual covenants contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS; EXHIBITS

1.1. Definitions. Each capitalized use of any of the following terms in the Recitals of this Agreement and in this Agreement has the meaning set forth below for each such term.

1.1.1. "AFC&WCD Property" means the real property described in Exhibit A which is owned by the Alameda County Flood Control and Water Conservation District and which is located in the City of Union City, and which is to be detached from the City of Union City and annexed to City. A portion of the AFC&WCD Property is to be acquired from the Alameda County Flood Control and Water Conservation District and conveyed to City for inclusion in the Sports Park Complex.

1.1.2. "Building and Improvement Standards" means those Regulations which are of general application within City, which are intended to be applied ministerially to the improvement of real property, and which establish standards for the building, construction and installation of structures, buildings, and associated improvements on real property, such as and including, without limitation, City's building, plumbing, mechanical, grading, swimming pool, sign and fire Regulations.

1.1.3. "CC&Rs" means any covenants, conditions, and restrictions recorded or to be recorded against the Property which provide for a development review process on the Property by an Owner's Association created by such covenants, conditions, and restrictions.

1.1.4. "City" means the City of Hayward, a charter city located in the County of Alameda, State of California.

1.1.5. "City Property" means the real property described in Exhibit B which is to be acquired by Owner from City and added to the Property in exchange for the land on which the Sports Park Complex is to be developed.

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1.1.6. "Conditions of Approval" means those conditions of approval of the Vesting Tentative Map contained in Exhibit C.

1.1.7. "Development" means the improvement of the Property with the structures, improvements and facilities comprising the Project including, without limitation: grading; the construction of infrastructure and the public facilities related to the Project whether located within or outside the Property; the construction of structures and buildings; and the installation of landscaping. "Development" does not include the maintenance, repair, reconstruction or redevelopment of any structures, improvements or facilities after the construction and completion thereof.

1.1.8. "Development Agreement Legislation" means Sections 65864 through 65869.5 of the California Government Code as they exist on the Effective Date.

1.1.9. "Development Agreement Ordinance" means Ordinance 84-015 C.S. (City Municipal Code Sections 10-9.01 through 10-9.15) which was adopted on July 10, 1984, establishing a procedure for the consideration and approval of development agreements pursuant to the Development Agreement Legislation.

1.1.10. "Development Approval(s)" means any and all permits, approvals or other entitlements for use of any kind or character required under the Existing Land Use Regulations and all amendments to the Existing Land Use Regulations necessary to confer the requisite lawful right on Owner to develop the Project on the Property, and all revisions and modifications thereto, including but not limited to: general plan amendments; specific plan amendments; preliminary development plans; tentative and final subdivision tract maps; vesting tentative maps; development permits for residences, commercial and industrial structures, and recreational amenities; development allotments; conditional use permits; variances; development guidelines; and grading, building, and other similar permits.

1.1.11. "Development Guidelines" means the Development Guidelines for the South of Route 92 Specific Plan adopted by Resolution No. 98-028 of City Council of City on February 17, 1998 and attached as Exhibit D.

1.1.12. "Development Plan" means the Development authorized by the Existing Development Approvals under the Existing Land Use Regulations.

1.1.13. "Director" means the Community and Economic Development Director/Planning Director of City.

1.1.14. "Effective Date" means _____, 1999, or such later date on which Ordinance No. _____ approving and authorizing the execution of this Agreement becomes effective.

1.1.15. "EIR" means the program environmental impact report entitled "South of Route 92 General Plan Amendment and Specific Plan, Oliver Estate/Weber Properties, Program

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Environmental Impact Report,” consisting of 3 volumes and an Addendum, and certified by Resolution No. 98-028 of City Council of City on February 17, 1998.

1.1.16. “Exaction” means any cost, fee, charge, payment, assessment, tax, or other monetary or non-monetary requirement charged or imposed by City as a condition of, or in connection with, the development of, construction on, or use of real property under any Land Use Regulation or any other Regulation, including without limitation: in-lieu fees or payments; assessments, dedication or reservation requirements; obligations for on-site or off-site improvements, facilities, or services; deposit requirements; bond requirements; insurance requirements; subdivision improvement requirements; mitigation measures in connection with environmental review of the Project; excise or other taxes imposed on the privilege of developing real property; or fees for services.

1.1.17. “Existing Development Approvals” means the Development Approvals in effect on the Effective Date. The following Approvals constitute the Existing Development Approvals:

- (a) The EIR;
- (b) The Statement of Overriding Considerations;
- (c) The Mitigation Monitoring and Reporting Program;
- (d) The General Plan Amendment;
- (e) The Specific Plan;
- (f) The Development Guidelines;
- (g) Measure HH;
- (h) The Vesting Tentative Map; and
- (i) The Conditions of Approval.

1.1.18. “Existing Land Use Ordinances” means the Land Use Ordinances in effect on the Effective Date. The Existing Land Use Ordinances include but are not limited to:

- (a) Ordinance No. 98-04 Amending the Zoning Ordinance, Chapter 10, Article 1 of the Hayward Municipal Code, To Establish New Zoning Districts and Regulations for the Open Space/Parks and Recreation District, the Commercial/Retail District, the Business Park District, and the Light Manufacturing, Planning/Research and Development District, which is attached hereto as Exhibit E; and

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(b) Ordinance No. 98-05 Amending Sections 10-1.156 And 10-1.166 Of Chapter 10, Article 1 of the Hayward Municipal Code by Rezoning and Prezoning Certain Territory Located in the South of Route 92 Planning Area, which is attached hereto as Exhibit F.

1.1.19. "Existing Land Use Regulations" means the Land Use Regulations in effect on the Effective Date, including but not limited to the Existing Land Use Ordinances and the Existing Development Approvals.

1.1.20. "General Plan" means the Hayward General Policies Plan, as amended through the Effective Date.

1.1.21. "General Plan Amendment" means the South of Route 92 General Plan Amendment (GPA 97-110-02) adopted by Resolution No. 98-028 of City Council of City on February 17, 1998 and attached as Exhibit G.

1.1.22. "Habitat Mitigation Plan" means the South of Route 92 Habitat Mitigation Plan date _____, 1999, to be approved by City prior to the approval of the first final map. Upon such approval, the Habitat Mitigation Plan shall be deemed to be one of the Existing Development Approvals.

1.1.23. "Land Use Ordinances" means the ordinances now or hereafter adopted by City which govern permitted uses of land, density and intensity of use, and the design, improvement, and construction standards and specifications applicable to the Development of the Property, including, but not limited to, zoning ordinances and zoning reclassifications; development moratoria; ordinances implementing growth management and phased development programs; ordinances establishing or increasing Exactions; subdivision and park codes and any other similar or related codes; and the Building and Improvement Standards.

1.1.24. "Land Use Regulations" means the Regulations now or hereafter adopted by City governing the permitted uses of land, density and intensity of use, including but not limited to: City's General Plan and the Specific Plan, and the design, improvement and construction standards and specifications applicable to the Development of the Property. The Land Use Regulations include, but are not limited to, the Land Use Ordinances and the Development Approvals. The Land Use Regulations do not include: (1) regulations relating to the conduct of business, professions and occupations generally; (2) regulations for the control and abatement of nuisances; (3) encroachment permits or other permits or conveyances of rights and interests which provide for the use of or entry upon public property; or (4) any exercise of the power of eminent domain.

1.1.25. "Measure HH" means the proposition approved by the voters of City on November 3, 1998 approving an ordinance changing the designation on the General Policies Plan Map of the General Plan for a portion of the Property from Open Space-Baylands to the designation described in Section VII.B.4 of Resolution No. 98-05 adopted by City Council of City on February 17, 1998, the passage of which at the November 3, 1998 election was

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acknowledged by City by Resolution 98-207 adopted on December 8, 1998, and which is attached as Exhibit H.

1.1.26. "Mitigation Monitoring and Reporting Program" means the Mitigation Monitoring and Reporting Program approved by Resolution No. 98-028 of City Council of City on February 17, 1998, which is attached hereto as Exhibit I.

1.1.27. "Mortgage" means a mortgage, deed of trust, sale and leaseback arrangement, assignment of leases and rents, lease financing, or other transaction in which the Property or a portion thereof, or any interest therein, is pledged as security, contracted for in good faith and for fair value.

1.1.28. "Mortgagee" means the holder of a beneficial interest in the Property under a Mortgage.

1.1.29. "Owner" means the Gordon Oliver Estate and Trust and the Alden Oliver Trust.

1.1.30. "Owners Association" means a property owners association created under any CC&Rs burdening the Property.

1.1.31. "Owner's Obligations" means the obligations of Owner to pay the sums, build and construct the improvements, dedicate the lands and improvements, and undertake and perform the other actions described in Section 3.

1.1.32. "Project" means all phases of the development project contemplated by the Development Plan with respect to the Property, including but not limited to on-site and off-site improvements, as such development project is further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.33. "Property" means the real property in which Owner has a legal or equitable interest on the Effective Date and on which Owner intends to develop the Project. The Property is more particularly described in Exhibit J. The Property includes the City Property upon its acquisition by Owner and any portion of the AFC&WCD Property that is conveyed to City and annexed to City.

1.1.34. "Public Facilities" means the lands and facilities to be improved, constructed and dedicated or conveyed to the public pursuant to Section 3.2, as described in the Conditions of Approval. The Public Facilities do not include the Sports Park Complex.

1.1.35. "Regulations" means City laws, statutes, ordinances, and codes (including the Building and Improvement Standards); resolutions, rules, regulations, orders, approvals, denials and conditional approvals in connection with tentative, vesting tentative and final subdivision maps, parcel maps, conditional use permits, variances and other permits of every kind and character; the programs and official policies and actions; and all amendments to the foregoing.

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1.1.36. "School Fee Mitigation Agreement" means the agreement between Owner and the Hayward Unified School District regarding the payment of school fees and which is attached as Exhibit K.

1.1.37. "Specific Plan" means the South of Route 92 Specific Plan (SP-98-210-01) adopted by Resolution No. 98-028 of City Council of City on February 17, 1998.

1.1.38. "Sports Park Complex" is the approximately 25-acre recreational complex conceptually described in the Specific Plan and approved by the voters, and more particularly referred to in the Vesting Tentative Map and the Conditions of Approval.

1.1.39. "Statement of Overriding Considerations" means the Statement of Overriding Considerations adopted by Resolution No. 98-028 of City Council of City on February 17, 1998.

1.1.40. "Vesting Tentative Map" means the vesting tentative subdivision map (TM-_____) approved by Resolution No. 99-__ of City Council of City on _____ and filed for record in the Official Records of Alameda County on _____, 1999 [add record information].

1.2. Exhibits. The reference to a specific "Exhibit" in this Agreement is a reference to one of the exhibits listed below, as determined by the accompanying letter designation, which exhibits are attached hereto and by this reference made a part hereof.

<u>Exhibit Designation</u>	<u>Description</u>
A	AFC&WCD Property
B	City Property
C	Conditions of Approval
D	Development Guidelines
E	Ordinance No. 98-04
F	Ordinance No. 98-05
G	General Plan Amendment
H	Measure HH
I	Mitigation Monitoring and Reporting Program
J	The Property

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Exhibit Designation

Description

K

School Fee Mitigation
Agreement

2. MUTUAL BENEFITS AND ASSURANCES

2.1 Purposes of Agreement. This Agreement is entered into to carry out the Development Plan for the Project in a manner that will ensure certain anticipated benefits to both City (including, without limitation, the existing and future residents of City) and Owner as described in the RECITALS, and to provide to Owner assurances regarding the Regulations that will be applicable to the Development of the Property, including but not limited to those relating to timing, density and intensity of development, that will justify the undertakings and commitments of Owner described above and the early investment in major on-site and off-site infrastructure needed for the Project.

2.2 Undertakings and Assurances Contemplated and Promoted by Development Agreement Legislation. The mutual undertakings and assurances described above and provided for in this Agreement are for the benefit of City and Owner and promote comprehensive planning, private and public cooperation and participation in the provision of public facilities; the effective and efficient development of infrastructure and facilities supporting development; and the mitigation of the impacts of development on the community which was contemplated and promoted by the Development Agreement Legislation.

2.3 Bargained For; Reliance by Parties. The assurances provided to Owner in Section 4 are provided pursuant to and as contemplated by the Development Agreement Legislation and are bargained for and consideration for the undertakings of Owner set forth in Section 3 of this Agreement.

3. OWNER'S OBLIGATIONS; PROVISION OF PUBLIC BENEFITS

3.1 In General; Public Benefits.

3.1.1 Public Benefits. A primary purpose of this Agreement is to provide for the coordinated completion of the Public Facilities described in the Conditions of Approval which will better serve the Development of the Property, as well as contributions and dedications which aid in offsetting the impacts of the Project on the community at large, and provide substantial public benefits, some of which are described in Recital D. Accordingly, Owner shall promptly and fully perform Owner's Obligations as set forth in and subject to the terms and conditions of the Conditions of Approval, including, but not limited to, the construction and dedication or conveyance of the Public Facilities.

3.1.2 Existing Conditions and Undertakings. Owner shall perform all of the duties and obligations provided for or required by any provisions of the General Plan, the

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Specific Plan, the Development Plan, the Existing Development Approvals, and the Conditions of Approval in connection with the Development of the Property. Owner has no obligation under this Agreement to proceed with development of the Project, if it decides, in its sole discretion, that it is unable or unwilling to construct the Project.

3.2. Dedication, Construction and Conveyance of Public Facilities. Owner shall complete the Public Facilities in accordance with the provisions of Conditions of Approval and with designs, specifications and standards promulgated by City in accordance with the Existing Land Use Regulations. Owner shall dedicate or convey the Public Facilities to City in fee, free of all liens and encumbrances of every kind and nature except as expressly set forth in the Conditions of Approval or as agreed to in writing by City. In order to effectuate the purposes of this Agreement, Owner and City may enter into one or more agreements (hereinafter "Implementation Agreements") prior to the filing and recording of each final map necessary for the Property. Such Implementation Agreements may take the form of subdivision improvement agreements. The Implementation Agreements shall provide the specific terms and set forth standards and deadlines for the construction and completion of the Public Facilities and their conveyance to City as provided for in this Agreement, and the construction of privately owned infrastructure and common facilities necessary for the phase described in the Vesting Tentative Map. All Implementation Agreements must be consistent with the Conditions of Approval, and the bonding or equivalent security requirements imposed on Owner in the Implementation Agreements must be in an amount consistent with the Conditions of Approval.

3.3. Relationship of Parties. In performing Owner's Obligations, Owner is an independent contractor and is not the agent or employee of City; nor shall anything in this Agreement be construed as creating between Owner and City a partnership or joint venture for any purpose.

3.4. Public Works. If Owner is required by this Agreement to finance and either design or construct any public works facilities which will be dedicated or conveyed to City or any other public agency upon completion, and if required by applicable laws to do so, Owner shall perform such work in accordance with City specifications as set forth in the Existing Land Use Regulations. This Section 3.4 does not apply to the financing, design, or construction of the Sports Park Complex.

3.5. Obligations Regarding Public Facilities. In any instance where Owner is required to construct any Public Facilities on lands within City not owned by Owner, Owner shall use its best efforts to acquire any rights-of-way, easements, or other property rights or interests within City which City reasonably determines to be necessary for such Public Facilities. If Owner is unable to acquire any such property right or interest and City must acquire or utilize eminent domain to acquire any real property rights or interests necessary for the construction of such Public Facilities, Owner shall pay the costs of acquiring such rights or interests, including but not limited to relocation costs, costs of suit, and attorney's fees, except as otherwise provided in the Conditions of Approval. In any instance where Owner is required to pay a portion of the costs of construction of Public Facilities on lands outside of City, Owner shall contribute its share of the reasonable costs of construction and acquisition either prior to the commencement of

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construction or acquisition of any rights-of-way, easements, or interests reasonably required to construct such Public Facilities, or as specified in the Conditions of Approval.

3.6. Mello-Roos Community Facilities District; Other Assessment District or Financing Mechanisms. Consistent with the requirements specified in the Conditions of Approval, pursuant to Chapter 2.5 (commencing with Section 53312) Part I, Division 2, Title 5 of the Government Code of the State of California, commonly known as the "Mello-Roos Community Facilities Act of 1982," Owner may, prior to the approval of the final map for the first phase, petition City to establish a Community Facilities District ("CFD") including the Property for the purpose of acquiring, constructing maintaining, and financing through the sale of bonds the acquisition and construction of all or a portion of the Public Facilities. Alternatively, or in addition thereto, Owner may request that City initiate and complete proceedings under any available public financing mechanism to provide public conduit financing for the construction or maintenance or both of all or a portion of the Public Facilities, including the power to acquire from Owner public improvements constructed by Owner ("Alternative Financing Mechanisms"). If so requested by Owner, City shall cooperate with Owner and use its best efforts to establish the CFD or Alternative Financing Mechanisms and to take all steps necessary to cause the CFD or Alternative Financing Mechanisms to issue bonds for such purposes, provided, however, that City may, in the exercise of its reasonable discretion, elect not to establish the CFD or Alternative Financing Mechanisms or to issue bonds for such purposes. Notwithstanding any other provision of this Section 3.6 or of this Agreement to the contrary, City shall not, without the written consent of Owner, cause to be imposed on the Property, any portion thereof or any lot or dwelling unit created therein, an effective property tax rate (as hereinafter defined) in excess of two percent (2%) of the full cash value of such property. As used herein, the term "effective property tax rate" means the basic tax rate allowed by California Constitution art. XIII A, Section 1(b), which Section for purposes of this Agreement is deemed to include any Mello-Roos financing or other Alternative Financing Mechanism requested by or consented to by Owner.

3.7. Maintenance of Improvements by Owners Association. Notwithstanding anything in Section 3.6 to the contrary, Owner may, with City's prior written approval and prior to the approval of the final map for the first phase, designate an Owners Association to maintain any Public Facility on the Property, or in reasonable proximity thereto, or where appropriate, the Alameda County Flood Control and Water Conservation District, and which Public Facility could otherwise be maintained through the CFD or Alternative Financing Mechanisms. City may impose reasonable requirements on any such Owners Association to ensure that the maintenance of those Public Facilities is performed in a manner acceptable to City.

3.8. Sports Park Complex. Owner's and City's specific rights and obligations with respect to the Sports Park Complex are set forth more fully in the Conditions of Approval which obligations are made part of Owner's Obligations. Owner shall, at Owner's sole cost and expense, construct the Sports Park Complex as part of the Project as provided in the Conditions of Approval, and except as otherwise provided in this Section 3.8, such construction shall be subject only to those Regulations applicable to private improvements within City. City may subject such construction to Building and Improvement Standards applicable to the construction

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of public improvements if such Building and Improvement Standards establish standards for construction of the improvements within the Sports Park Complex that are intended to enhance the safety of future users of the Sports Park Complex. Upon substantial completion of the Sports Park Complex and concurrently with conveyance of the City Property, Owner shall convey the Sports Park Complex to City free and clear of any liens or encumbrances other than the encumbrance of this Agreement.

4. REGULATIONS GOVERNING THE DEVELOPMENT OF THE PROPERTY AND OTHER CITY OBLIGATIONS

4.1. Permitted Uses. The uses permitted hereunder in accordance with the Existing Land Use Regulations, include but are not limited to the following: low-density residential, commercial/retail, business park, light manufacturing, planning/research and development, and open space/park and recreation uses, all as more specifically described in and subject to the limitations of the Development Plan.

4.2. Number of Dwelling Units, Density and Intensity. The total number of residential units, and the density and intensity of residential units and commercial uses permitted hereunder in accordance with the Existing Land Use Regulations are as set forth in the Development Plan and consist of 538 residential units (307 in the RS Zone, 141 in the RSB6 Zone, and 90 in the RSB8 Zone) and 22 business park lots as allowed by the Specific Plan. City shall not reduce the permitted number of residential units or the permitted number of business park lots without the prior written consent of Owner.

4.3. Maximum Height and Size of Buildings. The maximum height and size of the Project buildings on the Property permitted hereunder in accordance with the Existing Land Use Regulations are as set forth in the Development Plan.

4.4. Reservations and Dedications of Lands for Public Purposes and Undertaking to Participate in Completion of Major Public Facilities. As provided in Section 3 and more specifically described in the Conditions of Approval, Owner shall dedicate certain lands and construct and convey to the public the Public Facilities, and shall provide certain public benefits. In addition, Owner shall provide certain other public benefits and facilities as required by the Existing Land Use Regulations and the Existing Development Approvals.

4.5. Moratoria, Phasing of Development. Except as expressly provided in this Section 4, no subsequent City-imposed moratorium, ordinance, resolution, or other Land Use Regulation or limitation on the conditioning, rate, timing or sequencing of the Development of the Property or any portion thereof shall apply to or govern the Development of the Property during the term hereof whether affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building permits, occupancy permits or other entitlements to use issued or granted by City. In the event of any such subsequent action by City, City shall continue to grant to Owner all necessary Development Approvals in accordance with the Existing Land Use Regulations and

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otherwise permit the Development of the Property in accordance with the terms of this Agreement.

4.6. Term of Subdivision Maps and Other Existing Development Approvals.

Notwithstanding any provision of the Existing Land Use Regulations to the contrary, the Existing Development Approvals, including without limitation, the Vesting Tentative Map, are extended for the longer of (a) the term of this Agreement, as it may be extended pursuant to Section 7; or (b) the term of the particular Existing Development Approval otherwise allowed under the Subdivision Map Act ("Map Act") (Government Code Section 66410 *et seq.*) or the Existing Land Use Regulations.

4.7. Vested Rights Under Vesting Tentative Map. Notwithstanding any provision of the Existing Land Use Regulations to the contrary, the vested rights conferred by the Vesting Tentative Map are extended to the later of (a) a date three years after City approval of the last final map for the Project; or (b) the latest date otherwise allowed under the Map Act; and those vested rights and the provisions of this Section 4.7 survive termination of this Agreement.

4.8. Regulation of Development.

4.8.1. In General. Except as provided in Section 4.9.2, during the term of this Agreement, the Land Use Regulations applicable to and governing the Development of the Property are the Existing Land Use Regulations, and Owner has the vested contractual right to develop the Project on the Property in accordance with the Existing Land Use Regulations. During the term of this Agreement, City may control Development of the Property in accordance with this Agreement. If there is any inconsistency between this Agreement and the Existing Land Use Regulations, the provisions of this Agreement prevail.

4.8.2. Development Review Process. If an application is filed under the Land Use Regulations for a discretionary approval by City of an activity on the Property, City shall promptly provide written notification to the Owners Association created by the CC&Rs burdening the parcel or parcels that are the subject of the application of the filing of the application, and to the extent permitted by State law, City shall not process the application until it has received written notification from that Owners Association that the activity for which the approval is sought has been approved by that Owners Association, or City determines, in its sole discretion, that no such approval is required. City's failure to provide such notification does not constitute default under this Agreement, nor does such failure invalidate or otherwise impair any discretionary approval by City of any activity on the Property.

4.9. Limitations, Reservations and Exceptions.

4.9.1. New Land Use Regulations. City may apply new Land Use Regulations to the Development of the Property which are not in conflict with the Existing Land Use Regulations or this Agreement. New Land Use Regulations in conflict with this Agreement include but are not limited to Land Use Regulations that alter the requirements for any Exaction

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except as expressly permitted under this Agreement or alter any of the Existing Development Approvals, including without limitation, any of the following:

- (a) Land uses;
- (b) Density or intensity of land uses; or
- (c) The permitted height, size, or location of buildings.

4.9.2. State and Federal Laws and Regulations. City may apply any Land Use Regulation to the Development of the Property which City in the exercise of its reasonable discretion (taking into consideration, among other things, the assurances provided to Owner hereunder) determines is required in order for City to comply with mandatory State and federal laws and regulations that apply to the Development of the Property; provided, that if such State or federal laws and regulations preclude compliance with one or more provisions of this Agreement, such provisions are modified or suspended as may be necessary to comply with such State and federal laws and regulations. In that case and except as otherwise provided in this Section 4.9.2, this Agreement remains in full force and effect to the extent that it is consistent with such laws and regulations and that performance of the remaining provisions is consistent with the intent and purposes of this Agreement. If Owner determines in good faith using reasonable business judgment that modification or suspension of such provisions is infeasible, Owner may by written notice to City notify City that Owner intends either:

- (a) Terminate this Agreement; or
- (b) Extend the term of this Agreement pursuant to Section 14.15 for the duration of the period in which the change in State or federal laws precludes compliance with this Agreement.

4.9.3. Notwithstanding Section 4.9.2, if the City Council of City after public hearing and following receipt of Owner's notice concludes by a two-thirds vote based on substantial evidence that it is feasible to modify or suspend the provisions with which State or federal regulations preclude compliance, then the City Council of City may reject Owner's notification, in which case this Agreement is not terminated and such provisions shall be modified or suspended, as the City Council of City shall determine.

4.9.4. Public Health and Safety. City may apply any Land Use Regulation to the Development of the Project on the Property which City determines is reasonably required to prevent or respond to a condition creating substantial danger to the health or safety of persons on the Property or adjoining properties.

4.9.5. Building and Improvement Standards. City may apply to the Development of the Project on the Property present and future Building and Improvement Standards, except for any future Building and Improvement Standard that limits the land uses, reduces the density or intensity of land uses, or the permitted height, size, or location of buildings vested by this Agreement.

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4.9.6. Processing Fees and Charges. City may impose legally allowed processing fees and charges of every kind and nature imposed or required by City under current or future Regulations covering the actual costs of City in (i) processing applications and requests for permits, approvals and other actions and (ii) monitoring compliance with any permits issued or approvals granted or the performance required by OWNER hereunder.

4.9.7. Taxes, Fees and Assessments. City may impose taxes, assessments and fees, as allowed by law, necessary to implement the Project, including but not limited to those specifically mentioned in or contemplated by the Conditions of Approval. City may also impose such new reasonable taxes, assessments and fees on the Project as may be also imposed on all or a portion of other land and projects within the jurisdiction of the City provided that the impact thereof does not fall disproportionately on the Project or unfairly burden the Project vis-à-vis the rest of the land and projects within City's jurisdiction or portion thereof subject to the fee, tax or assessment. The amount of any fees, taxes and assessments applicable to the Project may be reasonably increased over time so long as the increase is applied consistently to all comparable land or projects subject thereto.

4.10. Regulation by Other Public Agencies. The parties acknowledge that other public agencies not within the control of City possess authority to regulate aspects of the Development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies.

4.11. City Cooperation; City Property; AFC&WCD Property. City shall cooperate with Owner and take such additional actions as may be reasonably requested by Owner to implement this Agreement. City shall perform all of its obligations under this Agreement in a timely manner, and City's failure to carry out any of its obligations in a timely manner relieves Owner from compliance with any reasonably related requirement or obligation. Without limiting the generality of the foregoing, City shall convey the City Property to Owner free and clear of any liens or encumbrances no later than 30 days after the Effective Date; and (b) promptly after the Effective Date annex the AFC&WCD Property.

4.12. Drainage, Flood Control, and Sewer Capacity. Owner shall design and construct, design and fund, or contribute to the cost of constructing any drainage, flood control, and sewer improvements that constitute obligations of Owner under the Conditions of Approval. For those off-site drainage, flood control, and sewer improvements that Owner is obligated to design and fund and City is obligated to construct, if any, City shall use its best efforts to complete such improvements in an expeditious and timely manner to enable timely issuance of Project building permits and certificates of occupancy. If Owner cannot comply with the Development Approvals or with this Agreement, or cannot develop the Project in accordance with the phasing plan approved by City because City fails to construct or complete any such Public Facility, Owner is not in default under this Agreement. City acknowledges that, with the drainage, flood control, and sewer improvements to be implemented by Owner, there is adequate drainage, flood control, and sewer capacity to serve the Project.

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4.13. Resolution For Private Streets. City shall adopt, if appropriate, a resolution or ordinance subjecting the Project's private streets to the provisions of the California Vehicle Code and to any Department of Motor Vehicles regulations or other regulations promulgated thereto.

4.14. Acceptance of Dedications. In accordance with the requirements of the Conditions of Approval and this Agreement, City shall accept in a timely manner all dedications and conveyances of Public Facilities from Owner.

5. PERIODIC REVIEWS

5.1. Annual Review. City and Owner shall annually review performance under this Agreement. Owner shall pay City's reasonable costs of monitoring this Agreement. To institute each such annual review, within 30 days after each anniversary of the Effective Date, Owner shall deliver to City:

(a) A then current build-out phasing plan for the Project; and

(b) All information reasonably requested by City regarding Owner's performance under this Agreement demonstrating that Owner has complied in good faith with terms of this Agreement.

5.2. Termination After Annual Review. If as a result of such annual review, the Director finds and determines, on the basis of substantial evidence, that Owner has not complied in good faith with any of the terms or conditions of this Agreement, City may terminate or modify this Agreement in whole or in part in accordance with Section 10-9.11 of the Development Agreement Ordinance, subject to the following limitations:

(a) Termination of this Agreement is governed by Section 10 of this Agreement and is subject to Section 11 of this Agreement; and

(b) Any modifications of this Agreement by the City Council of City pursuant to Section 10-9.11 of the Development Agreement Ordinance, and notwithstanding Section 10-9.13 of the Development Agreement Ordinance, that are not consented to in writing by Owner are limited to modifications or conditions that are both (i) reasonably necessary to ensure the future good faith compliance by Owner with this Agreement; and (ii) necessary to protect the interests of City.

5.3. Certificate of Compliance. If after an Annual Review, City finds Owner has complied in good faith with this Agreement, City shall issue to Owner a Certificate of Compliance certifying that Owner has so complied through the period of the applicable Annual Review. The Certificate of Compliance shall be prepared by Owner, must be in recordable form, and must contain such information as may be necessary to impart constructive notice of City's finding. Upon issuance of the Certificate of Compliance, City is estopped from pursuing any remedy under this Agreement for any default which knew or should have known existed prior to or on the date of the Certificate of Compliance. Owner may record the Certificate of Compliance in the Official Records of the County of Alameda.

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6. TRANSFERS AND ASSIGNMENTS

6.1. Sale, Transfer and Assignments of Rights and Interests.

6.1.1. General. Except as otherwise provided in this Section 6, neither party shall sell, assign or transfer any of its interests, rights or obligations under this Agreement to any person or entity other than a Mortgagee without the written consent of the other, which consent shall not be unreasonably withheld. City shall promptly consent to the sale, assignment, or transfer if City determines that all of the following requirements are met: (a) Owner is not in default under this Agreement; (b) the purchaser, assignee, or transferee is willing to and can comply with this Agreement and agrees to comply with this Agreement; and (c) the purchaser, assignee, or transferee executes any document reasonably requested by City with respect to the assumption of the Owner's Obligations. If Owner sells, assigns, or transfers all or any portion of its interest in the Property to any person or entity other than a Mortgagee, Owner shall ensure that any such sale, assignment or transfer includes an assignment and an assumption of Owner's Obligations. Owner shall also provide City with sufficient documentation of such assignment and assumption of Owner's Obligations. The term "assignment" as used in this Agreement includes successors-in-interest to City or Owner that may be created by operation of law. Any attempt to sell, assign or transfer any right or interest in this Agreement except in strict compliance with this Section 6 is null and void and of no force and effect. Notwithstanding the foregoing, City may sell, assign or transfer to another public agency City's interest in any property dedicated or transferred to City pursuant to the terms of this Agreement.

6.1.2. Exceptions. Owner may sell, assign, or transfer to Duc Housing Partners, Inc., a Delaware corporation ("Duc Housing"), all or a portion of Owner's interests, rights, and obligations under this Agreement without the prior written consent of City, provided that such sale, assignment, or transfer is in connection with a sale, assignment, or transfer of all or a portion of the Property, and Duc executes any document reasonably requested by City with respect to the assumption of Owner's Obligations.

6.1.3. Subject to Terms of Agreement. Following any such sale, assignment or transfer of any of the rights and interests of Owner under this Agreement, the exercise, use and enjoyment of any portion of the Property sold, assigned, or transferred shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were Owner.

6.1.4. Release of Owner. Notwithstanding the sale, assignment, or transfer of portions or all of the Property or rights or interests under this Agreement, Owner remains obligated under this Agreement unless released in whole or in part by City with respect to Owner's Obligations and the other duties and obligations of Owner under this Agreement, pursuant to this Section 6.1.4. City shall release Owner if :

- (a) Owner is not in default under this Agreement;

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(b) City consents to the sale, assignment, or transfer as provided in Section 6.1.1 or the assignment is to Duc Housing; and

(c) The purchaser, assignee or transferee assumes in writing the duties and obligations from which Owner wishes to be released.

7. TERM OF AGREEMENT

7.1. Stated Term. This Agreement is effective as of the Effective Date and continues for a term of 10 years unless earlier terminated pursuant to the provisions of this Agreement. Notwithstanding the foregoing, the term of this Agreement may be extended an additional 5 years by the further written agreement of the parties in accordance with Section 8.

7.2. Rights and Duties Following Termination or Expiration. Upon the termination or expiration of this Agreement, no party has any further right or obligation hereunder except with respect to:

(a) Any obligation to be performed prior to termination or expiration, including without limitation, performance of any obligation with respect to which a party may be in default at the time of termination or expiration; or

(b) Any obligation which survives termination or expiration pursuant to the Existing Development Approvals.

7.3. Effect of Termination. If this Agreement is terminated because of a default, the termination does not affect any right or duty arising out of any Development Approval obtained concurrently with, or subsequently to, the Effective Date. Nothing in Section 7.2 precludes City from revoking, rescinding, or otherwise terminating any Development Approval either contemporaneously with termination of this Agreement or subsequently thereto.

8. AMENDMENT

8.1. Amendment or Cancellation. Except as otherwise specifically provided in this Agreement, this Agreement may be amended or cancelled only by the mutual agreement of the parties in a writing executed by the parties and recorded in the official records of the County of Alameda, in accordance with Government Code Section 65868 and Section 10-9.12 of the Development Agreement Ordinance.

8.2. Amendment of Development Plan. The Development Plan may be amended or modified by City in the following manner:

8.2.1. Procedural Requirements. Except as otherwise provided in Section 8.2.2, all amendments or modifications of the Development Plan must comply with the procedural provisions of the Land Use Regulations in effect on the date of application for such amendment or modification.

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8.2.2. Amendment By Director. At his or her discretion, the Director may administratively make minor modifications to the Development Plan.

9. PROCESSING OF REQUESTS AND APPLICATION; OTHER GOVERNMENT PERMITS

9.1. Processing. Upon satisfactory completion by Owner of all required preliminary actions, meetings, submittal of required information and payment of appropriate processing fees, if any, Owner and City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the Development Plan in accordance with the Development Approvals, including but not limited to the following: (a) processing and checking of all applications, maps, site plans, development plans, land use plans, grading plans, building plans and specifications, and environmental assessments and reports; and (b) holding all required public hearings for annexations, permits, entitlements or approvals relating to the development of the Project, including, but not limited to, all site plan approvals, final development plans, parcel maps, subdivision maps, subdivision improvement agreements, grading permits, building permits, lot line adjustments, encroachment permits, and related matters as necessary for the completion of the development of all lots and parcels comprising the Property. In this regard, Owner, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder and shall cause Owner's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefor. It is the express intent of this Agreement that the parties cooperate and diligently work to implement any annexations, zoning or other land use, site plan, subdivision, grading, building or other approvals for development of the Project in accordance with the Development Approvals, and both Owner and City each shall use their best efforts to effectuate the purposes of this Agreement.

9.2. Other Governmental Permits. Owner shall apply in a timely manner for such other permits and approvals as may be required from other governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. City shall cooperate with Owner in its endeavors to obtain such permits and approvals.

10. DEFAULT AND REMEDIES

10.1. Termination of Agreement for Default of Owner. After public hearing and in conformity with Section 10-9.13 of the Development Agreement Ordinance, City in its reasonable discretion may terminate this Agreement for any failure of Owner to perform any material duty or obligation of Owner under, or to comply in good faith with, the material terms of this Agreement (hereinafter referred to as an "Owner's Default"); provided, however, City may terminate this Agreement pursuant to this Section 10.1 only after providing written notice to Owner of default setting forth the nature of the Owner's Default and the actions, if any, required by Owner to cure such default and, if that default can be cured, Owner fails to take such actions and cure such default within 90 days after the providing of such notice or, in the event that such default cannot be cured within such 90-day period but can be cured within a longer time, fails to

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commence the actions necessary to cure such default within such 90-day period and to diligently proceed to complete such actions and cure such default.

10.2. Termination of Agreement for Default of City. Owner in its reasonable discretion may terminate this Agreement for any failure of City to perform any material duty or obligation of City under, or to comply with, the material terms of this Agreement (hereinafter referred to as a "City Default"); provided, however, Owner may terminate this Agreement pursuant to this Section 10.2 only after providing written notice to City of default setting forth the nature of City's Default and the actions, if any, required by City to cure such default and, if that default can be cured, City fails to take such actions and cure such default within 90 days after the providing of such notice or, in the event that such default cannot be cured within such 90-day period but can be cured within a longer time, fails to commence the actions necessary to cure such default within such 90-day period and to diligently proceed to complete such actions and cure such default.

10.3. Remedies. In any dispute arising under this Agreement, the parties may mutually agree to mediation of their dispute. Alternatively, either party may, in addition to any other rights or remedies it may have at law or in equity, institute an action to enforce any covenant or agreement herein, enjoin any threatened or attempted violation, or enforce by specific performance the obligations and rights of the parties hereto.

10.4. No Cross Default. Except as provided in Section 6, each owner of a parcel or parcels encumbered by this Agreement is responsible for the duties, obligations and liabilities imposed by this Agreement on such parcel or parcels; and the default by that owner with respect to the performance of that owner's duties, obligations and liabilities hereunder respecting the parcel or parcels owned by that owner does not constitute a default by any other owner of another parcel or parcels encumbered by this Agreement with respect to the performance of any other owner's duties, obligations and liabilities hereunder.

11. MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE

11.1. No Impairment of Mortgage. This Agreement is superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement defeats, renders invalid, diminishes or impairs the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement are binding upon and effective against any person (including any Mortgagee) who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

11.2. Rights of Mortgagee. Notwithstanding the provisions of Section 11.1, no Mortgagee has any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee that construction or completion, but no Mortgagee may devote the Property to any uses or construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement and any Development Approvals obtained by Owner.

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11.3. Notice to Mortgagee; Right to Cure. If City receives notice from a Mortgagee requesting a copy of any notice of default given Owner under this Agreement and specifying the address for service thereof, City shall deliver to that Mortgagee, concurrently with service on Owner, any notice given to Owner with respect to any claim by City that Owner has committed a default, and if City makes a determination of noncompliance under Section 10.1, City shall also serve notice of that noncompliance on that Mortgagee concurrently with service on Owner. Notwithstanding anything to the contrary in Sections 5 and 10, each Mortgagee has a period of 90 days after the receipt of that notice from City to cure or remedy, or to commence to cure or remedy, the default claimed or the areas of noncompliance set forth in City's notice. If the default or the noncompliance is of a nature that can only be remedied or cured by the Mortgagee upon obtaining possession, the Mortgagee shall diligently seek to obtain possession through a receiver or otherwise, and shall thereafter remedy or cure the default or noncompliance within 90 days after obtaining possession. If any default or noncompliance cannot, with diligence, be remedied or cured within those 90-day periods, then the Mortgagee has additional time as may be reasonably necessary to remedy or cure the default or noncompliance if the Mortgagee commences to cure during those 90-day periods, and thereafter diligently pursues completion of that cure. Nothing in this Agreement permits or authorizes any Mortgagee to undertake or continue construction or completion of any improvements comprising the Project beyond the extent necessary to conserve or protect improvements or construction already made, without first having expressly assumed Owner's Obligations in the manner specified in Section 6.

11.4. City Right to Cure. If Owner defaults under any Mortgage, City may cure that default prior to completion of any foreclosure or any proceeding to terminate the interest of Owner in the Property. Concurrently with serving any notice of default on Owner under a Mortgage, each Mortgagee shall provide to City the same notice of default given Owner. If City invokes its right to cure, Owner shall reimburse City for all costs and expenses incurred by City in curing that default. At its option and in its sole discretion, City may also place a lien upon the Property, or portion thereof, encumbered by the Mortgage with respect to which Owner has defaulted, to the extent of those costs and expenses. That lien is subject and subordinate to the interest of any Mortgagee under its Mortgage, regardless of the date the Mortgage is created or recorded.

12. EFFECT OF AGREEMENT

12.1. Successors; Covenants Run With The Land. Subject to the provisions of Section 6;

12.1.1. Binding On Successors. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns;

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12.1.2. Equitable Servitudes. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law; and

12.1.3. Benefit and Burden. Each covenant to do or refrain from doing some act on the Property hereunder (a) is for the benefit of and is a burden upon every portion of the Property, (b) runs with such lands, and (c) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and shall benefit each party and its lands hereunder, and each other person succeeding to an interest in such lands.

12.2. No Dedication or Lien. Nothing herein shall be construed as constituting a dedication or transfer of any right or interest in, or as creating a lien with respect to, the title to the Property. Any dedication or transfer of any right or interest in the Property shall be made only in accordance with this Agreement.

13. HOLD HARMLESS

13.1. Hold Harmless; Owner's Activities. Owner shall defend, indemnify, save, and hold City and its elected and appointed boards, commissions, officers, agents, and employees harmless from any and all claims, costs and liability, and shall provide a defense for City, upon City's tender, in any action for damages, personal injury, or death, which may arise, directly or indirectly, from Owner's or Owner's contractors, subcontractors, agents, or employees' operations under this Agreement, whether such operations be by Owner or by any of Owner's contractors or subcontractors or by any one or more persons directly or indirectly employed by or acting as agent for Owner or any of Owner's contractors or subcontractors.

13.2. Hold Harmless; Challenge of Agreement. Owner shall defend, indemnify, save, and hold City and its elected and appointed boards, commissions, officers, agents, and employees harmless from any and all costs, including costs of suit and attorneys' fees, and shall provide a defense for City, upon City's tender, in any action challenging the validity of this Agreement or relating to any of the Existing Development Approvals, including but not limited to compliance with any requirement of law, approval or action which is a condition precedent to Development of any portion of the Property. City shall have no liability for failure to perform under this Agreement if such failure to perform is the result of a judicial determination that on the Effective Date, the Existing Land Use Regulations were invalid or otherwise not in compliance with law.

14. MISCELLANEOUS PROVISIONS

14.1. Effect of Agreement. With respect to the City Property, the provisions of this Agreement bind the use of that property when title to same is transferred to Owner.

14.2. City Acceptance of Mitigation. City acknowledges and agrees that compliance with the provisions of the Conditions of Approval with respect to the mitigation of school

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impacts (evidenced by the School Fee Mitigation Agreement), and local park requirements (through the provision of the community park, the planned dedication of land to City for the Sports Park Complex and the improvement thereof, and other public recreational amenities such as the Bay Trail extension) constitutes full and complete satisfaction of required mitigation of impacts on schools (insofar as City has authority to do so), parkland and open space and meets all City requirements regarding same.

14.3. Recordation of Agreement. The City Clerk of City shall cause this Agreement to be recorded in the Official Records of the County of Alameda within 10 days after the execution of this Agreement by Owner and by City's City Manager pursuant to the ordinance approving this Agreement. Any amendment or cancellation of this Agreement shall be immediately recorded in the Official Records of the County of Alameda.

14.4. Estoppel Certificate.

14.4.1. Contents. Owner may at any time deliver written notice to City requesting City to certify in writing that:

(a) This Agreement is in full force and effect and a binding obligation of the parties;

(b) This Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments; and

(c) Owner is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature and amount of those defaults.

14.4.2. Execution. City shall execute and return the certificate within 30 days following receipt of that notice. The Director is authorized to execute any estoppel certificate requested by Owner. An estoppel certificate obtained under this Section 14.4 may be relied upon by transferees and Mortgagees.

14.5. Certificate of Satisfaction. After completion of the Project, City, upon request of Owner, shall execute in recordable form and deliver to Owner a Certificate of Satisfaction, certifying that Owner has satisfied all of Owner's obligations under this Agreement to the date of the certification. Upon issuance of a Certificate of Satisfaction City is estopped from pursuing any remedy under this Agreement for any default which City knew or should have known existed prior to or on the date of the Certificate of Satisfaction. Owner may record the Certificate of Satisfaction in the Official Records of the County of Alameda.

14.6. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein and no testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

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14.7. Severability. If any term, provision, covenant or condition of this Agreement, including but not limited to the Exhibits to this Agreement, shall be determined invalid, void or unenforceable by a final determination by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Any final determination that any condition in any Exhibit is invalid, void or unenforceable shall not affect any other condition or portion of any Existing Development Approval which is not also specifically determined invalid, void or unenforceable except to the extent such remaining conditions are rendered impracticable to perform.

14.8. Integration and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California.

14.9. Headings. All headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

14.10. Singular and Plural. As used herein, the singular of any word includes the plural.

14.11. Joint and Several Obligations. If any obligation of Owner to City is the obligation of more than one person, such obligation and any liability with respect thereto shall be joint and several among the obligees.

14.12. Time of Essence. Time is of the essence in:

(a) The performance of the provisions of this Agreement as to which time is an element; and

(c) The resolution of any dispute which may arise concerning the obligations of Owner and City as set forth in this Agreement.

14.13. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

14.14. No Third Party Beneficiaries. The only parties to this Agreement are Owner and City. There are no third party beneficiaries, and this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person whatsoever.

14.15. Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond such party's control, government regulations other than City's, court actions (such as restraining orders or injunctions) or other causes beyond such party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party

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of any of its obligations hereunder shall be extended by the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than 5 years or for a period which would cause this Agreement or provisions hereof to be void as violating the rule against perpetuities.

14.16. Attorneys' Fees. In any action or undertaking between the parties hereto to enforce the provisions of this Agreement, each of the parties hereto shall bear its own attorneys' fees.

14.17. Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

14.18. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent certified mail, postage prepaid and addressed as follows:

If to City:	Jesús Armas, City Manager City of Hayward 777 "B" Street Hayward, CA 94541-5007
With a copy to:	Michael O'Toole, City Attorney City of Hayward 777 "B" Street Hayward, CA 94541-5007
If to Owner:	Maurie Greenstein Executor and Trustee 39159 Paseo Padre Parkway, Suite 315 Fremont, CA 94538
With a copy to:	Jack Smith Haley, Purchio, Sakai & Smith 22320 Foothill Boulevard Hayward, CA 94543
And a copy to	Michael B. Wilmar Nossaman, Guthner, Knox & Elliott, LLP 50 California Street, 34 th Floor San Francisco, CA 94111

Any notice given as required herein shall be deemed given 72 hours after deposit in the United States mail or upon receipt. A party may change its address for notices by giving notice in writing to the other party as required herein and thereafter notices shall be addressed and transmitted to the new address.

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14.19. Counterparts. This Agreement may be executed by the parties in counterparts which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

OWNER: THE GORDON OLIVER TRUST AND ESTATE

By: _____
Maurie Greenstein
Executor and Trustee

OWNER: THE ALDEN OLIVER TRUST

By: _____
Maurie Greenstein, Trustee

CITY: CITY OF HAYWARD

By: _____
City Manager

Attest: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

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EXHIBIT LIST*

<u>Exhibit Designation</u>	<u>Description</u>
A	AFC&WCD Property
B	City Property
C	Conditions of Approval
D	Development Guidelines
E	Ordinance No. 98-04
F	Ordinance No. 98-05
G	General Plan Amendment
H	Measure HH
I	Mitigation Monitoring and Reporting Program
J	The Property
K	School Fee Mitigation Agreement

* to be added

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AGREEMENT FOR PAYMENT OF SCHOOL IMPACT FEES

This Agreement is entered into by and between Oliver Trust (Developer) and the Hayward Unified School District (District).

WHEREAS, Developer has applied for approval of a development project calling for the construction of up to 540 detached residential units in the City of Hayward. Said development project is hereafter referred to as the "South of SR92 Specific Plan" (Project). A legal description of the property on which the Project will be constructed is attached hereto as Exhibit "A" and incorporated herein by this reference.

WHEREAS, Developer acknowledges that the Project will lead to an increase in student enrollment in the District as a result of the project.

WHEREAS, Developer acknowledges that the projected increase in student enrollment caused by the Project will have an adverse effect on the District due to the present overcrowding of District schools.

WHEREAS, District and Developer agree that the statutorily imposed development impact fees under Government Code Section 65995 do not adequately offset the impact on school facilities caused by the subject development.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS AND OF THE MUTUAL CONDITIONS AND COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

I. Developer agrees to pay to District school impact mitigation fees ("Mitigation Fees") if and at the time a building permit is issued by the City of Hayward for each unit in the Project. The amount of the Mitigation Fees paid for each residential unit shall be \$2.84 per square foot of "assessable residential space" (as such space is defined under Section 65995 of the California Government Code), adjusted annually as provided under Paragraph 2, below. Assessable commercial space shall be assessed at the rate of \$0.30 per square foot.

II. The amount of the Mitigation Fees to be paid shall increase by three percent annually each July 1st beginning July 1, 2003.

III. The payment of such Mitigation Fees shall be deemed to be in complete satisfaction of all fees and/or exactions that District may now or hereafter be authorized to impose through any provision of law, including, without limitation, Government Code Section 65995 and the California Environmental Quality Act. District acknowledges that by payment of the Mitigation Fees, Developer is providing complete mitigation for all impacts upon District caused by the Project, including school environmental impacts, and that such payment shall constitute District's complete and final satisfaction for mitigation of any and all such impacts. In particular, satisfaction of Developer's obligation to the District as set forth in this Paragraph shall constitute the full and exclusive method of mitigating the environmental effects on the District caused by the Project.

IV. District acknowledges that Developer is applying, or has applied, to the City of Hayward for a variety of land use approvals for the Project, including, without limitation, a general plan amendment, a specific plan, zoning amendment and vesting tentative subdivision map, as well as to other public agencies for related approvals necessary to development of the Project (collectively, the "Entitlements"). Developer's "Receipt of Entitlements" shall be deemed to have occurred when all Entitlements needed to construct the Project have been actually approved by final action of the approving agency and either (a) the statute of limitations for legal challenge to them has expired without suit being filed, or (b) any such suit has proceeded to final judgment or has otherwise been disposed of.

V. If at any point in time Developer determines in its sole and absolute discretion that it will be unable to obtain Receipt of Entitlements for the Project, then Developer may, by written notice to District, elect to terminate this Agreement, in which case this Agreement shall become null and void. District shall, upon written notice to Developer, have the option to terminate this Agreement if the first building permit for the Project has not been issued to Developer by December 31, 2008.

VI. District shall cooperate fully with Developer at no cost to District in defense of any legal challenge to this Agreement or any legal challenge to the Entitlements if such challenge is related to this Agreement. District shall not, in any way, directly or indirectly, take any action to oppose or hinder the receipt of Entitlements by Developer or the actual development of the Project.

VII. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties and shall be recorded.

VIII. This Agreement contains the full and entire agreement of the parties hereto, is executed without reliance upon any representations by the parties or any of their representatives

except those contained herein, and is freely and voluntarily executed by the parties after each of them has been advised of all relevant information and has consulted with legal counsel.

IX. All notices given pursuant to this Agreement shall be addressed to Developer or District as set forth below or as Developer or District may hereafter designate in writing, and shall be sent through the United States Mail, duly registered or certified, return receipt requested with postage prepaid thereon, or by any other method providing proof of delivery.

To Developer:

Oliver Trust
c/o Morey Greenstein
39150 Paseo Padre Parkway
Fremont, CA 94538

Haley, Purchio, Sakai & Smith
c/o Jack Smith
22320 Foothill Boulevard #620
Hayward, CA 94541

To District:

Hayward Unified School District
c/o Lawrence R. Lepore
Director, Facilities and Planning
P.O. Box 5000
Hayward, California 94540

X. This Agreement may not be modified, changed, supplemented or terminated, nor any obligations hereunder be waived, except by written instrument by the party to be charged or by its agent duly authorized in writing.

IN WITNESS WHEREOF, District and Developer have caused this Agreement to be as of the day and year set forth below.

HAYWARD UNIFIED SCHOOL DISTRICT

By: Frank Davis Jr.

Clerk of the Board

Date: 10/28/98

OLIVER TRUST

By: Morey Greenstein

Trustee

Date: 10/23/98

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA

County of ALAMEDA

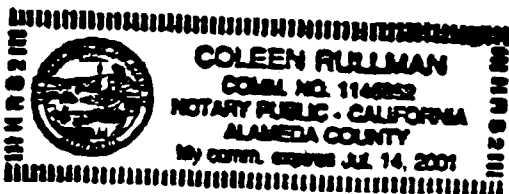
On OCTOBER 18, 1998 before me, COLEEN RULLMAN, Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared FRANK GARCIA

Name(s) of Signer(s)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Coleen Rullman

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer
- Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer
- Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

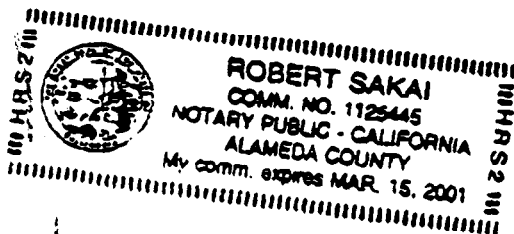
RIGHT THUMBPRINT
OF SIGNER
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RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA) SS.

On 10-23-98 before me, the undersigned personally appeared
Morley Greenstein, personally known to me (or
proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Robert Sakai
Notary Public

In and for the State of California
My commission expires: 3-15-2001

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA) SS.

On _____ before me, the undersigned personally appeared
_____, personally known to me (or
proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

In and for the State of California
My commission expires: _____

LEGAL DESCRIPTION

OLIVER EAST

UNINCORPORATED AREA

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 4, TOWNSHIP 4 SOUTH, RANGE 2 WEST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF; RUNNING THENCE ALONG THE SOUTHERN LINE OF SAID SECTION 4 EAST, 2640 FEET; THENCE NORTH 1320 FEET TO THE SOUTHERN LINE OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 4 AND THE TRUE POINT OF BEGINNING; THENCE ALONG THE LAST NAMED LINE AND ALONG THE DIRECT EXTENSION THEREOF, EAST 1320 FEET TO THE DIRECT EXTENSION SOUTHERLY OF THE EASTERN LINE OF SAID NORTHWEST 1/4; THENCE ALONG LAST SAID EXTENDED LINE NORTHERLY, TO THE SOUTHWESTERN LINE OF HESPERIAN BOULEVARD, FORMERLY TELEGRAPH ROAD, OR COUNTY ROAD NO. 90, 66 FEET WIDE, AS SAID ROAD EXISTED PRIOR TO ITS WIDENING; THENCE ALONG THE LAST NAMED LINE NORTHWESTERLY, TO THE SOUTHERN LINE OF THE PARCEL OF LAND SECONDLY DESCRIBED IN THE DEED BY INVESTORS AND PROMOTERS TO HAYWARD WATER COMPANY, DATED JULY 1, 1915, RECORDED JULY 16, 1915, IN BOOK 2344 OF DEEDS, PAGE 355, ALAMEDA COUNTY RECORDS, THENCE ALONG THE LAST NAMED LINE AND ALONG THE DIRECT EXTENSION THEREOF, WESTERLY 2536.05 FEET, MORE OR LESS, TO THE NORTHEASTERN LINE OF THE RIGHT OF WAY 80 FEET WIDE OF THE SOUTHERN PACIFIC COMPANY, FORMERLY THE SOUTH PACIFIC COAST RAILROAD; THENCE ALONG THE LAST NAMED LINE SOUTHEASTERLY, TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM:

1. THOSE PORTIONS THEREOF DESCRIBED IN PARCELS 2 AND 4 IN THE FINAL JUDGMENT IN CONDEMNATION IN THE ACTION HAD IN SUPERIOR COURT, ALAMEDA COUNTY, CASE NO. 277357, ENTITLED ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, PLAINTIFF, VS. MILLICENT E. SCHAEFER, ALDEN E. OLIVER AND ADOLPH A. OLIVER, JR., DEFENDANTS, A CERTIFIED COPY WHEREOF WAS RECORDED JULY 1, 1960, ON REEL 118, IMAGE 914, INSTRUMENT NO. AR/77039, ALAMEDA COUNTY RECORDS.
2. THAT PORTION THEREOF LYING WITHIN THE LINES OF THE PROPERTY DESCRIBED IN THE DEED TO ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, DATED JUNE 8, 1965, RECORDED JULY 9, 1965, ON REEL 1547, IMAGE 514, INSTRUMENT NO. AX/94590, OFFICIAL RECORDS.
3. THAT PORTION DESCRIBED IN THE DEED TO THE COUNTY OF ALAMEDA, RECORDED FEBRUARY 1, 1980, SERIES NO. 80-019346, OFFICIAL RECORDS.

ASSESSOR'S PARCEL NO. 456-0095-002-04

LEGAL DESCRIPTION

OLIVER WEST

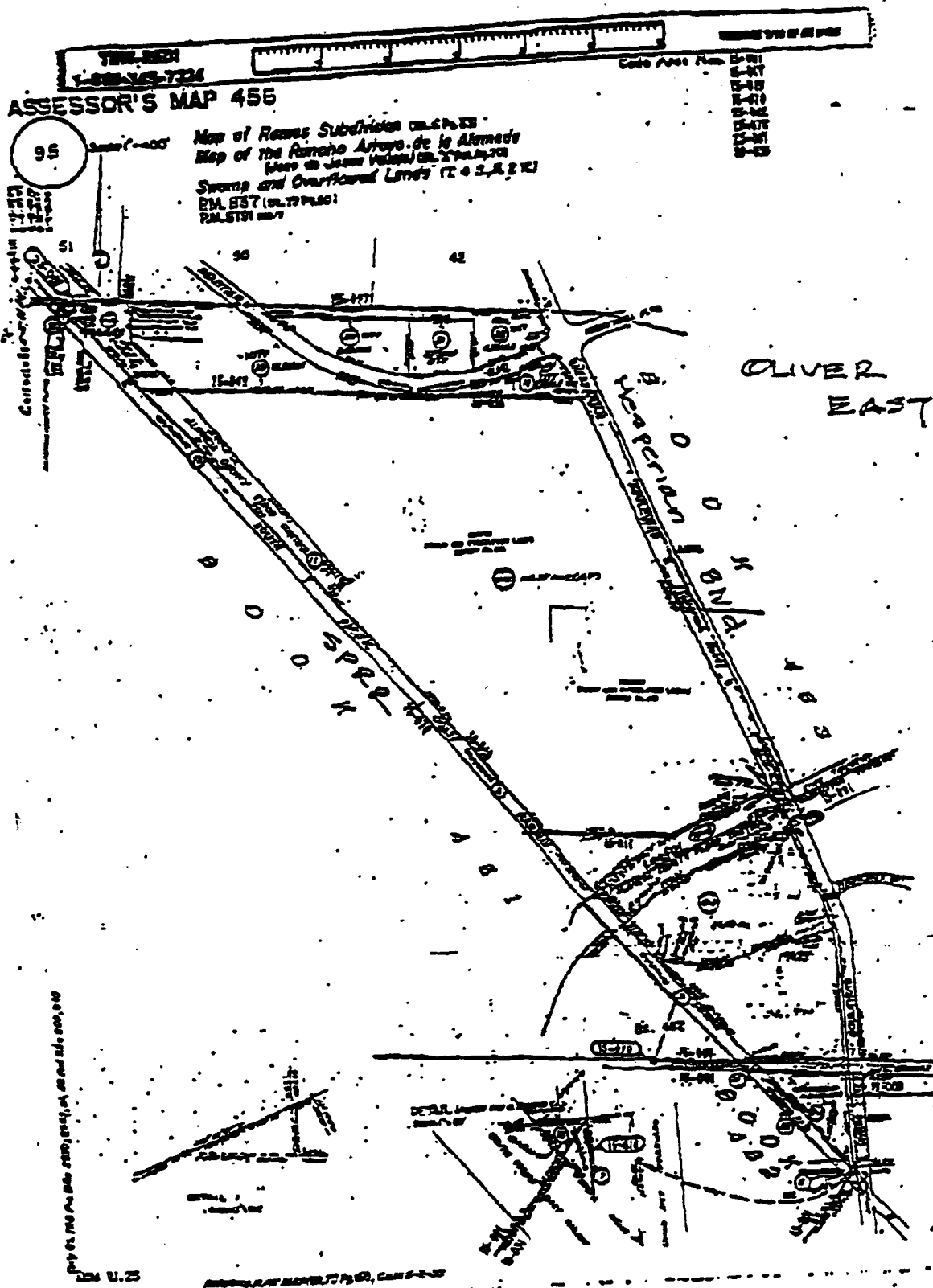
CITY OF HAYWARD

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 4, TOWNSHIP 4 SOUTH, RANGE 2 WEST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF; RUNNING THENCE ALONG THE SOUTHERN LINE OF SAID SECTION 4, EAST 2640 FEET; THENCE NORTH 1320 FEET TO THE SOUTHERN LINE OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 4; THENCE ALONG THE LAST NAMED LINE AND ALONG THE DIRECT EXTENSION THEREOF; EAST 1320 FEET TO THE DIRECT EXTENSION SOUTHERLY OF THE EASTERN LINE OF SAID NORTHWEST 1/4; THENCE ALONG LAST SAID EXTENDED LINE NORTHERLY, TO THE SOUTHWESTERN LINE OF HESPERIAN BOULEVARD, FORMERLY TELEGRAPH ROAD, OR COUNTY ROAD NO. 90, 66 FEET WIDE, AS SAID ROAD EXISTED PRIOR TO ITS WIDENING; THENCE ALONG THE LAST NAMED LINE NORTHWESTERLY, TO THE SOUTHERN LINE OF THE PARCEL OF LAND SECONDLY DESCRIBED IN THE DEED BY INVESTORS AND PROMOTERS TO HAYWARD WATER COMPANY, DATED JULY 1, 1915, RECORDED JULY 16, 1915, IN BOOK 2344 OF DEEDS, PAGE 359, ALAMEDA COUNTY RECORDS; THENCE ALONG THE LAST NAMED LINE, AND ALONG THE DIRECT EXTENSION THEREOF, WESTERLY 2536.05 FEET, MORE OR LESS, TO THE SOUTHWESTERN LINE OF THE RIGHT OF WAY, 80 FEET WIDE, OF THE SOUTHERN PACIFIC COMPANY, FORMERLY THE SOUTH PACIFIC COAST RAILROAD; THENCE ALONG THE LAST NAMED LINE SOUTHEASTERLY, 1460 FEET, MORE OR LESS, TO THE SOUTHERN LINE OF THE 18.37 ACRE TRACT OF LAND DESCRIBED IN THE DEED BY ADOLPH A. OLIVER AND EMILIE OLIVER TO JOHN M. GERRARD, DATED OCTOBER 11, 1937, RECORDED NOVEMBER 2, 1937, IN BOOK 3559 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 273, THENCE ALONG THE LAST NAMED LINE WESTERLY, 1154.76 FEET TO THE WESTERN LINE OF SAID SECTION 4; THENCE ALONG THE LAST NAMED LINE SOUTH, 2715 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM:

1. THAT PORTION THEREOF WHICH LIES WITHIN THE RIGHT OF WAY, 80 FEET WIDE, OF THE SOUTHERN PACIFIC COMPANY, FORMERLY THE SOUTH PACIFIC COAST RAILROAD.
2. THAT PORTION THEREOF LYING WITHIN THE LINES OF PARCEL 15, AS SAID PARCEL IS DESCRIBED IN THAT CERTAIN GRANT DEED FROM OLIVER BROS. FARMS, A CO-PARTNERSHIP, ET AL, TO CROCKER NATIONAL BANK, ET AL, AS EXECUTORS OF THE WILL OF ADOLPH A. OLIVER, JR, RECORDED SEPTEMBER 14, 1977, RE: 5047, IM: 217, ALAMEDA COUNTY RECORDS.
3. THAT PORTION THEREOF DESCRIBED AS PARCELS 1 AND 3 IN THE FINAL JUDGMENT IN CONDEMNATION FILED JULY 1, 1960, IN THE SUPERIOR COURT, ALAMEDA COUNTY, CASE NO. 277357, ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, PLAINTIFF, VS. MILLICENT B. SCHAFER, ET AL, DEFENDANTS, A CERTIFIED COPY THEREOF WAS RECORDED JULY 1, 1960, IN REEL 118 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, IMAGE 914, INSTRUMENT NO. AR/77039, OFFICIAL RECORDS.

ASSESSOR'S PARCEL NOS. 461-0035-006
 461-0035-007



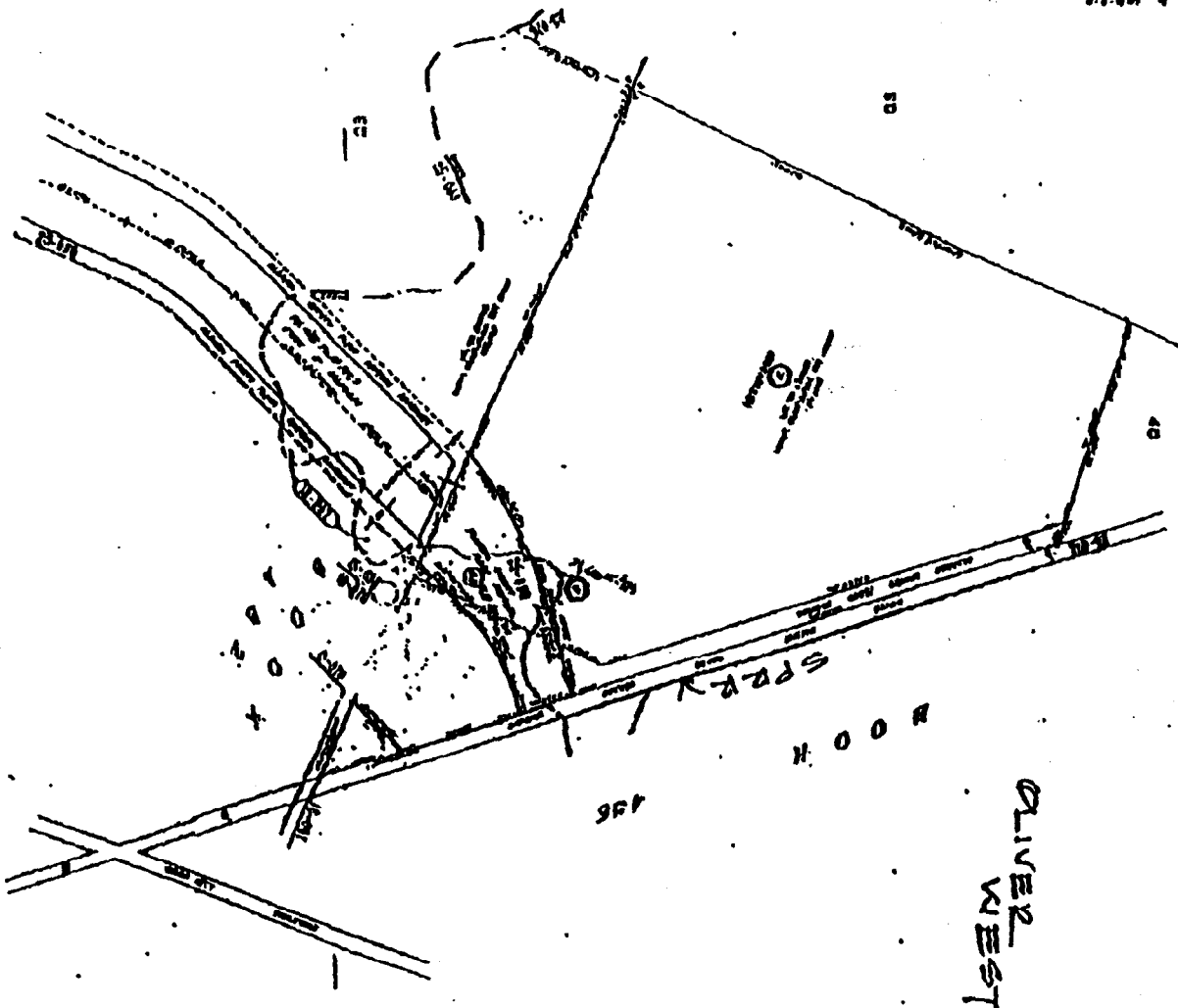
ASSESSOR'S MAP 461

35

FRAM AND ORIENTED LAND
TERRACE
RS. 1800 (approx)



Scale: 1 inch = 100 feet
Contours: 100 feet



Order: 00000505489 TQF: MF AL BK-Pg 461 - 35 SH 1 of 1

Attachment "F", correspondence is available for viewing in the Planning Office at City Hall, 777 "B" Street, Hayward.



DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
Development Review Services Division

ENVIRONMENTAL FACTORS EVALUATION

Project title: Vesting Tentative Map Tract 7065

Lead agency name and address: City of Hayward, 777 B Street, First Floor, Hayward, CA 94541-5007

Contact person and phone number: Cathy Woodbury, Landscape Architect/Senior Planner, (510) 583-4210

Project location: Hesperian and Industrial Boulevards, Hayward, CA

Project sponsor's Name and address: Ruggeri-Jensen-Azar & Associates, 6601 Owens Drive, Suite 155, Pleasanton, CA 94588

General Plan: South of Route 92 Specific Plan

Zoning: Business Park (BP), Light Manufacturing (LM), Commercial/Retail (CR), Open Space (OS), Single Family Residential (RS, RSB6, RSB8)

Description of project: Request to subdivide 238 acres into 537 single-family residential lots, 22 commercial/light manufacturing lots, 2 neighborhood parks and a sports park; and approval of a Development Agreement.

CHANGES IN ENVIRONMENTAL FACTORS:

Changes in the environmental factors checked below were not examined in the *South of Route 92 General Plan Amendment and Specific Plan, Oliver Estate/Weber Properties, Program Environmental Impact Report*, prepared by EIP Associates, dated January, 1998.

- | | | |
|--|---|--|
| <input type="checkbox"/> Land Use and Planning | <input type="checkbox"/> Transportation/Circulation | <input type="checkbox"/> Public Services |
| <input type="checkbox"/> Population and Housing | <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Utilities and Service Systems |
| <input type="checkbox"/> Geological Problems | <input type="checkbox"/> Energy and Mineral Resources | <input type="checkbox"/> Aesthetics |
| <input type="checkbox"/> Water | <input type="checkbox"/> Hazards | <input type="checkbox"/> Cultural Resources |
| <input type="checkbox"/> Air Quality | <input type="checkbox"/> Noise | <input type="checkbox"/> Recreation |
| <input type="checkbox"/> Mandatory Findings
Of Significance | | |

DETERMINATION:

On the basis of this evaluation, I find that the proposed project will not result in environmental effects that were not examined in the program EIR. Further, the proposed project and circumstances have not changed from those examined in the program EIR and no new mitigation measures are required. Therefore, additional environmental study is not required.

Cathy Woodbury
Signature
Cathy Woodbury, ASLA/AICP
Printed name

5/28/99
Date
City of Hayward
For

ENVIRONMENTAL IMPACTS:

*Proposed Project
And
Circumstances
Have Changed*

*No Changes To
Proposed Project
And
Circumstances*

I. LAND USE AND PLANNING. *Would the proposal:*

- a) Conflict with general plan designation or zoning?

☐☒

Comment: The proposed project is consistent with the Specific Plan for the South of Route 92 Area and the adopted zoning district regulations.

- b) Conflict with applicable environmental plans or policies adopted by agencies with jurisdiction over the project?

☐☒

Comment: The proposed project is consistent with the program EIR and the mitigation measures therein.

- c) Be incompatible with existing land use in the vicinity?

☐☒

Comment: Proposed uses are consistent with those adopted in the Specific Plan and zoning district regulations.

- d) Affect agricultural resources or operations not addressed in the EIR?

☐☒

Comment: There has been no change in the existing or proposed uses within and surrounding the site.

- e) Disrupt or divide the physical arrangement of an established community?

☐☒

*Proposed Project
And
Circumstances
Have Changed*

*No Changes To
Proposed Project
And
Circumstances*

II. POPULATION AND HOUSING. *Would the proposal:*

- a) Cumulatively exceed official regional or local population projections beyond those addressed in the EIR?

☐☒

Comment: There has been no change in the project's residential density.

- b) Induce additional substantial growth in an area either directly or indirectly beyond that addressed in the EIR?

☐☒

Comment: There has been no change in the intensity of development proposed with this project.

- c) Displace existing housing, especially affordable housing not identified in the EIR?

☐☒

Comment: There has been no change in the number of dwellings on the project site.

III. GEOLOGIC PROBLEMS. *Would the proposal result in or expose people to potential impacts not addressed in the EIR involving:*

- a) Fault rupture?

☐☒

Comment: Geologic conditions have not changed since preparation of the EIR.

- b) Seismic ground shaking?

☐☒

Comment: Geologic conditions have not changed since preparation of the EIR.

	<i>Proposed Project And Circumstances Have Changed</i>	<i>No Changes To Proposed Project And Circumstances</i>
c) Seismic ground failure, including liquefaction?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Comment:</u> Geologic conditions have not changed since preparation of the EIR.		
d) Seiche, tsunami, or volcanic hazard?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Comment:</u> Geologic conditions have not changed since preparation of the EIR.		
e) Landslides or mudflows?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Comment:</u> Geologic conditions have not changed since preparation of the EIR.		
f) Erosion changes in topography or unstable soil conditions from excavation, grading, or fill?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Comment:</u> Geologic conditions have not changed since preparation of the EIR.		
g) Subsidence of land?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Comment:</u> Geologic conditions have not changed since preparation of the EIR.		
h) Expansive soils?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Comment:</u> Geologic conditions have not changed since preparation of the EIR.		
i) Unique geologic or physical features?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Comment:</u> Geologic conditions have not changed since preparation of the EIR.		

*Proposed Project
And
Circumstances
Have Changed*

*No Changes To
Proposed Project
And
Circumstances*

IV. WATER. *Would the proposal result in:*

- a) Changes in absorption rates, drainage patterns, or the rate and amount of surface runoff not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- b) Exposure of people or property to water related hazards, such as flooding that are not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- c) Discharge into surface waters or other alteration of surface water quality not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- d) Changes in the amount of surface water in any water body not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- e) Changes in currents, or the course or direction of water movements not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

	<i>Proposed Project And Circumstances Have Changed</i>	<i>No Changes To Proposed Project And Circumstances</i>
f) Change in the quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations or through substantial loss of groundwater recharge capability not already addressed in the EIR?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Comment:</u> No changes have been identified in the proposed project.		
g) Altered direction or rate of flow of groundwater not already addressed in the EIR?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Comment:</u> No changes have been identified in the proposed project.		
h) Impacts to groundwater quality not already addressed in the EIR?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Comment:</u> No changes have been identified in the proposed project.		
i) Substantial reduction in the amount of groundwater otherwise available for public water supplies not already addressed in the EIR?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Comment:</u> No changes in have been identified in the proposed project.		

*Proposed Project
And
Circumstances
Have Changed*

*No Changes To
Proposed Project
And
Circumstances*

V. AIR QUALITY. *Would the proposal:*

- a) Violate any air quality standard or contribute to an existing or projected air quality violation not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- b) Expose sensitive receptors to pollutants not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- c) Alter air movement, moisture, or temperature, or cause any change in climate not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- d) Create objectionable odors not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

VI. TRANSPORTATION/CIRCULATION.

Would the proposal result in:

- a) Increased vehicle trips or traffic congestion not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- | | <i>Proposed Project
And
Circumstances
Have Changed</i> | <i>No Changes To
Proposed Project
And
Circumstances</i> |
|---|--|---|
| b) Hazards to safety from design features (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment) not already addressed in the EIR? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <u>Comment:</u> No changes have been identified in the proposed project. | | |
| c) Inadequate emergency access or access to nearby uses not already addressed in the EIR? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <u>Comment:</u> No changes have been identified in the proposed project. | | |
| d) Insufficient parking capacity onsite or offsite not already addressed in the EIR? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <u>Comment:</u> No changes have been identified in the proposed project. | | |
| e) Hazards or barriers for pedestrians or bicyclists not already addressed in the EIR? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <u>Comment:</u> No changes have been identified in the proposed project. | | |
| f) Conflicts with adopted policies supporting alternative transportation not already addressed in the EIR? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <u>Comment:</u> No changes have been identified in the proposed project. | | |
| g) Rail waterborne or air traffic impacts not already addressed in the EIR? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <u>Comment:</u> No changes have been identified in the proposed project. | | |

*Proposed Project
And
Circumstances
Have Changed*

*No Changes To
Proposed Project
And
Circumstances*

VII. BIOLOGICAL RESOURCES. *Would the proposal result in impacts to:*

- a) Endangered, threatened or rare species or their habitats (including but not limited to plants, fish, insects, animals, and birds) not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- b) Locally designated species (e.g., heritage trees) not already identified in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- c) Locally designated natural communities (e.g., oak forest, coastal habitat, etc.) not already identified in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- d) Wetland habitat (e.g., marsh, riparian, and vernal pool) not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- e) Wildlife dispersal or migration corridors not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

*Proposed Project
And
Circumstances
Have Changed*

*No Changes To
Proposed Project
And
Circumstances*

VIII. ENERGY AND MINERAL RESOURCES. *Would the proposal:*

- a) Conflict with adopted energy conservation plans not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- b) Use nonrenewable resources in a wasteful and inefficient manner not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- c) Result in the loss of availability of a known mineral resource that would be of future value to the region and the residents of the State not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

IX. HAZARDS. *Would the proposal involve:*

- a) A risk of accidental explosion or release of hazardous substances (including, but not limited to, oil, pesticides, chemicals or radiation) not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- b) Possible interference with an emergency response plan or emergency evacuation plan not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

*Proposed Project
And
Circumstances
Have Changed*

*No Changes To
Proposed Project
And
Circumstances*

- c) The creation of any health hazard or potential health hazard not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- d) Exposure of people to existing sources of potential health hazards not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- e) Increased fire hazard in areas with flammable brush, grass, or trees not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

X. NOISE. *Would the proposal result in:*

- a) Increases in existing noise levels not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- b) Exposure of people to severe noise levels not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

*Proposed Project
And
Circumstances
Have Changed*

*No Changes To
Proposed Project
And
Circumstances*

XI. PUBLIC SERVICES. *Would the proposal
Have an effect upon, or result in a need for
new or altered government services in any of
the following areas:*

- a) Fire protection services not already
addressed in the EIR?

☐☒

Comment: No changes have been
identified in the proposed project.

- b) Police protection services not already
addressed in the EIR?

☐☒

Comment: No changes have been
identified in the proposed project.

- c) School services not already addressed in
the EIR?

☐☒

Comment: No changes have been
identified in the proposed project.

- d) Maintenance of public facilities, including
roads not already addressed in the EIR?

☐☒

Comment: No changes have been
identified in the proposed project.

- e) Other government services not already
addressed in the EIR?

☐☒

Comment: No changes have been
identified in the proposed project.

*Proposed Project
And
Circumstances
Have Changed*

*No Changes To
Proposed Project
And
Circumstances*

XII. UTILITIES AND SERVICE SYSTEMS.

Would the proposal result in a need for new systems or supplies, or substantial alterations to the following utilities?

- a) Power or natural gas needs or alterations not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- b) Communications systems needs or alterations not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- c) Local or regional water treatment or distribution facilities not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- d) Sewer or septic tanks not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- e) Storm water drainage needs or alterations not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- f) Solid waste disposal needs or alterations not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

*Proposed Project
And
Circumstances
Have Changed*

*No Changes To
Proposed Project
And
Circumstances*

- g) Local or regional water supplies needs or alterations not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

XIII. AESTHETICS. *Would the proposal?*

- a) Affect a scenic vista or scenic highway not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- b) Have a demonstrable negative aesthetic effect not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- c) Create light or glare not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

XIV. CULTURAL RESOURCES. *Would the proposal:*

- a) Disturb paleontological resources not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

*Proposed Project
And
Circumstances
Have Changed*

*No Changes To
Proposed Project
And
Circumstances*

- b) Disturb archaeological resources not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- c) Have the potential to cause a physical change, which would affect unique cultural values not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- d) Restrict existing religious or sacred uses within the potential impact area?

☐☒

Comment:

Impact:

XV. RECREATION. *Would the proposal:*

- a) Increase the demand for neighborhood or regional parks or other recreational facilities not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

- b) Affect existing recreational opportunities not already addressed in the EIR?

☐☒

Comment: No changes have been identified in the proposed project.

XVI. EARLIER ANALYSES.

- a) Analysis based on the *South of Route 92 General Plan Amendment and Specific Plan, Oliver Estate/Weber Properties, Program Environmental Impact Report*, prepared by EIP Associates, dated January, 1998.

**SOUTH OF ROUTE 92
GENERAL PLAN AMENDMENT AND SPECIFIC PLAN
OLIVER ESTATE/WEBER PROPERTIES**

MITIGATION MONITORING AND REPORTING PROGRAM

Prepared For:

City of Hayward
Department of Community and Economic Development

Prepared By:

EIP Associates
601 Montgomery Street, Suite 500
San Francisco, California 94111

(415) 362-1500

January, 1998

INTRODUCTION

BACKGROUND

All public agencies are required to adopt mitigation monitoring or reporting programs when they approve projects with Environmental Impact Reports (EIRs) or Negative Declarations that identify significant environmental impacts. The reporting and monitoring program must be adopted when a public agency makes its findings under the California Environmental Quality Act (CEQA: Chapter 2.6 Section 21081.6) so that the program can be made a condition of project approval. The program must be designed to ensure project compliance with mitigation measures during project implementation. If certain project impacts extend beyond the project implementation phase, long-term mitigation monitoring should be provided in the monitoring program.

PURPOSE

The South of Route 92 Specific Plan Mitigation Monitoring and Reporting Program will ensure that all required mitigation measures are completed as part of Specific Plan area project construction and maintained in a satisfactory manner during project implementation. This Program is designed in a checklist format for ease of use by the responsible parties. The checklist identifies the individual mitigation measures and the time frame for implementation, and assigns a party responsible to implement, monitor, and confirm the implementation of the mitigation measure. The checklist will be used by the City of Hayward to verify that all required mitigation measures are incorporated into the project(s) and will provide a convenient tool to determine whether required mitigation measures have been fulfilled.

MITIGATION MONITORING AND REPORTING PROGRAM

MANAGEMENT

The City of Hayward Department of Community and Economic Development will be responsible for overall implementation and administration of the Mitigation Monitoring and Reporting Program for development of the Specific Plan area. Duties would include the following:

- Conduct routine inspections, plan checking, and reporting activities.
- Serve as a liaison between the City and developer(s) regarding mitigation monitoring issues.
- Coordinate activities of consultants hired by the developer(s) when such expertise and qualifications are necessary to implement and monitor mitigation measures.
- Coordinate with agencies having mitigation monitoring responsibilities.
- Assure follow-up and response to citizens' complaints.
- Complete forms and checklists for reporting. Maintain reports and other records and documents generated by the monitoring program.
- Coordinate and assure corrective actions or enforcement measures are taken, if necessary.

BASELINE DATA

The baseline data for each of the environmental impact mitigation measures to be monitored over the duration of the project is contained in the Program Environmental Impact Report (EIR) prepared for the South of Route 92 Specific Plan project.

ENFORCEMENT

The Mitigation Monitoring and Reporting Program will be incorporated as a condition of Specific

Plan project approval. Therefore, all mitigation measures must be complied with in order to fulfill the requirements of the approval. In addition, a number of the mitigation measures will be incorporated into project designs and implemented during the course of the development review process. These measures will be checked on plans, in reports, and in the field prior to the granting of construction-related permits (i.e. grading, building, and occupancy permits). If compliance is not found, these permits would not be granted. Most of the remaining mitigation measures will be implemented during the construction, or project implementation phase. If work is performed in violation of mitigation measures, stop work orders may be issued.

Other mitigation measures will be monitored over time in order to ensure long-term compliance. These mitigation measures include the success of wetland and habitat enhancement and wetland water quality protection. Community and Economic Development Department staff are to amend mitigation measures if necessary to assure success. Mitigation measures and monitoring actions are provided in the Checklist. Mitigation measure numbers (i.e., 3.1.2-1) are the same as documented in the South of Route 92 Program EIR. In addition to identifying the monitoring and reporting actions, the Checklist provides specific penalties for non-compliance.

MONITORING AND REPORTING

The monitoring and reporting program identifies each mitigation measure for a significant environmental impact and specifies the following:

- mitigation action(s) required and the timing of mitigation action(s)
- the criteria or performance standard established for each mitigation measure
- responsible party or agency to conduct the monitoring and reporting
- the frequency of monitoring
- the frequency of reporting the outcome of monitoring activities, and
- sanctions to be imposed for noncompliance with required mitigation measures

FUNDING

The requirements for mitigation monitoring and reporting do not provide a specific funding mechanism for implementation of mitigation monitoring and reporting programs. However, public agencies have the authority to levy charges, fees or assessments to pay for the program, just as they currently do for the preparation of EIRs.

**CHECKLIST
SOUTH OF ROUTE 92 GENERAL PLAN AMENDMENT
AND
SPECIFIC PLAN
OLIVER ESTATE/WEBER PROPERTIES

DRAFT MITIGATION MONITORING
AND REPORTING PROGRAM**

3.1.3 TRAFFIC AND CIRCULATION

Mitigation Measure 3.1.3-1

- **Hesperian Boulevard/Industrial Boulevard:** Provide a free eastbound-to-southbound right-turn lane. In addition, modify the northbound approach to provide two left turn lanes, two through lanes, and one combination through and right lane. Modify the southbound approach to provide two left turn lanes, one through lane and one combination through and right turn lane. Modify the westbound approach to have one left turn lane, two through lanes and one right turn lane. Provide eight-phase signal operation.
- **Hesperian Boulevard/Tripaldi Way:** Signalize the intersection as required for General Plan conditions.
- **I-880 Southbound Ramps/Industrial Parkway:** Widen the off-ramp (southbound) approach to provide a second left-turn lane as recommended under General Plan conditions.
- **Hesperian Boulevard/Tennyson Road:** Install a second exclusive southbound left turn lane as recommended for General Plan conditions.
- **Industrial Boulevard/State Route 92 Westbound Ramps:** Provide the same mitigation as recommended for the General Plan scenario: Widen the northbound approach to provide a second exclusive left-turn lane. This improvement would necessitate minor widening of a portion of the westbound on-ramp to accept the second left turn lane. The impact triggering this mitigation measure is not considered significant because the projected LOS is the same as in the General Plan scenario and the intersection delay does not increase by 4 seconds or more.

- **Hesperian Boulevard/State Route 92 Eastbound Ramps:** Provide the same mitigation as recommended for the General Plan scenario: Widen the eastbound off-ramp approach to provide a second exclusive right turn lane and by widening the southbound approach to provide a second exclusive left-turn lane. The latter improvement would necessitate widening of the eastbound on-ramp to accept the second left-turn lane. The impact triggering this mitigation is not considered significant because the project LOS is the same as in the General Plan scenario and the intersection delay does not increase by 4 seconds or more.

Monitoring Action/Timing

Preparation of intersection improvement construction plans and specifications prior to project construction.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.1.3-1.

Responsible Agency

City of Hayward, Department of Public Works.

Monitoring Frequency

Upon City approval of intersection improvement construction plans and specifications.

Reporting Frequency

At completion of installation of intersection improvements.

Noncompliance Sanction

No sanctions. Responsibility rests with the City of Hayward.

Mitigation Measure 3.1.3-3

- To reduce the duration of filling operations, six days per week of filling shall be permitted.
- Traffic control personnel shall be provided at the entrance of the LaVista Quarry during peak periods in order to safely control truck operations. Alternatively, interconnected traffic signals could be installed at this location.
- A traffic control plan shall be developed prior to any filling operations which specifies time of operations, roadway cleaning requirements and responsibilities, roadway maintenance and repair responsibilities, traffic signing and flagging requirements, signal timing adjustments, etc. The City of Hayward shall approve such plan prior to

the initiation of any trucking filling operations.

Monitoring Action/Timing

Preparation of construction plans and specifications prior to project construction.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.1.3-3.

Responsible Agency

City of Hayward, Department of Public Works.

Monitoring Frequency

Upon City approval of construction plans and specifications.

Reporting Frequency

On-going during fill operations.

Noncompliance Sanction

No approval of construction plans and specifications. Halting of fill operations during problem resolution.

3.1.4 VISUAL QUALITY AND COMMUNITY CHARACTER

Mitigation Measure 3.1.4-1

The planning and design of projects for buildout of the Specific Plan area should conform to the provisions of the Development Guidelines chapter of the Specific Plan. Conformance review would occur with each development decision utilizing the Development Guidelines criteria within the Specific Plan. Conformance review would occur during the City of Hayward's project review process prior to the issuance of grading and construction permits.

Monitoring Action/Timing

Preparation of concept plans, construction drawings and specifications per Specific Plan Development Guidelines.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.1.4-1. City should devise a worksheet which identifies the Development Guideline requirements as part of the permit issuance process.

Responsible Agency

City of Hayward, Department of Community and Economic Development. Updates to be provided to City by project sponsors.

Monitoring Frequency

Ongoing per development of project concept plans, construction drawings and specifications.

Reporting Frequency

Ongoing per development of project concept plans, construction drawings and Specifications.

Noncompliance Sanction

Withholding of issuance of grading and construction permits.

Mitigation Measure 3.1.4-2

Some physical and visual unification of parcels throughout the Plan area would be achieved through the use of landscape development, pedestrian/bike trails and sidewalks per the Specific Plan Design Guidelines. To the extent feasible, the trail system should extend from the Oliver West parcel into the Oliver East parcel and Sports Park facility. A sidewalk for pedestrians and bicyclists is planned to be incorporated into the earth fill/bridge structure crossing over the Union Pacific Railroad tracks.

Monitoring Action/Timing

Preparation of concept plans, construction drawings and specifications per Specific Plan Development Guidelines.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.1.4-2. City should devise a worksheet which identifies the Development Guideline requirements as part of the permit issuance process.

Responsible Agency

City of Hayward, Department of Community and Economic Development in collaboration with the East Bay Regional Parks District, Hayward Area Recreation District, U.S. Army Corps of Engineers, and any other agency determined to be a Responsible Agency. Updates to be provided to City and Agencies by project sponsors.

Monitoring Frequency

Ongoing per development of project concept plans, construction drawings and specifications.

Reporting Frequency

Ongoing per development of project concept plans, construction drawings and Specifications.

Noncompliance Sanction

Withholding of issuance of grading and construction permits.

Mitigation Measure 3.1.4-3

Provide sufficient variation in slopes of the earth fill profile and installation of plant materials in the attempt to visually blend the railroad overcrossing into the landscape development program..

Monitoring Action/Timing

Preparation of concept plans, construction drawings and specifications per Specific Plan Development Guidelines.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.1.4-3.

Responsible Agency

City of Hayward, Department of Community and Economic Development.

Monitoring Frequency

Development of project concept plans, overcrossing construction drawings and specifications.

Reporting Frequency

Ongoing per development of project concept plans, construction drawings and specifications.

Noncompliance Sanction

Withholding of issuance of grading and construction permits.

Mitigation Measure 3.1.4-4

Specific design details of the buffers have not been developed although the design concept has been developed. The buffers would consist of earth berms or levees with water features and native plant materials affording seasonal interest if and as approved by the California Department of Fish and Game.

The buffers should be designed to alleviate their uniform length and width in order to avoid monotony in design and improve their appearance with respect to the planned residential setting. Buffer design should be integrated and consistent with the overall plan for informal landscape development within the residential portion of the Specific Plan area which would reduce the visual impact of uniform buffers to a level of insignificance. The buffers should not remain as visually isolated and singular components of landscape development (for

additional information regarding the buffers, see section 3.2.3, *Biological Resources*).

Monitoring Action/Timing

Preparation of concept plans, construction drawings and specifications per Specific Plan Development Guidelines.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.1.4-4.

Responsible Agency

City of Hayward, Department of Community and Economic Development in collaboration with the East Bay Regional Parks District, Hayward Area Recreation District, U.S. Army Corps of Engineers, and any other agency determined to be a Responsible Agency.

Monitoring Frequency

Ongoing per development of project concept plans, construction drawings and specifications.

Reporting Frequency

Ongoing per development of project concept plans, construction drawings and Specifications.

Noncompliance Sanction

Withholding of issuance of grading and construction permits.

Mitigation Measure 3.1.4-5

Night lighting for public streets would need to conform with City of Hayward standards consistent with current street lighting. For mitigation, night lighting along public streets, in business park and industrial areas, and in the Sports Park, should be focused downward and/or shielded to avoid glare and point sources of light interfering with the vision of residents and motorists on local roadways. Lighting elements should be recessed within their fixtures to prevent glare. The overall objective would be to establish area lighting that would be adequate for safety and surveillance, but minimize the potential effects lighting on nighttime views from locations within and around the Specific Plan project area. A specialist in lighting design should be consulted to determine light source locations, light intensities and type of light source.

Monitoring Action/Timing

Preparation of concept plans, construction drawings and specifications per Specific Plan Development Guidelines.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.1.4-5.

Responsible Agency

City of Hayward, Department of Community and Economic Development.

Monitoring Frequency

Ongoing per development of project concept plans, construction drawings and specifications.

Reporting Frequency

Ongoing per development of project concept plans, construction drawings and Specifications.

Noncompliance Sanction

Withholding of issuance of grading and construction permits.

Mitigation Measure 3.1.4-6

The stockpiling and storage of construction materials and equipment prior to installation and use should be minimized to the extent practicable. Only construction materials and equipment required for several days of construction within a given area should be stockpiled at one time. Although construction staging areas have not been designated at this time, such staging areas should be located as close to or within the area of construction as possible, out of the way of community traffic and pedestrian use. This mitigation measure is applicable to developed areas only, including off-site developed areas adjacent to the Weber parcel and on-site areas (such as residential development), which become occupied as the Specific Plan area is developed.

Monitoring Action/Timing

Preparation of construction drawings and specifications.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.1.4-6.

Responsible Agency

City of Hayward, Department of Community and Economic Development.

Monitoring Frequency

Ongoing per development of project construction plans and specifications, and field checks during construction.

Reporting Frequency

Ongoing per development of project construction drawings and Specifications, and field checks during construction.

Noncompliance Sanction

No City approval of construction drawings and specifications. Stop work order during construction.

3.1.6 UTILITIES

Water

Mitigation Measure 3.1.6-1

The City of Hayward would need to construct the pump capacity required to boost distribution capacity to meet project-related water demand. The City would be responsible for assessing and mitigating any associated environmental impacts. As a condition of providing water services, the City would recover the project's proportional share of the cost of developing the required pumping capacity, and that amount would be equal to the share of the project's use of the increased capacity.

Monitoring Action/Timing

Conduct pumping capacity design, environmental review under CEQA (an Initial Study as warranted), and collect necessary fees to construct the pumping facility. Construct the pumping facility, all in advance of project construction.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.1.6-1.

Responsible Agency

City of Hayward, Department of Community and Economic Development in collaboration with the Department of Public Works.

Monitoring Frequency

At completion of specified activities as shown above under "Monitoring Action/Timing".

Reporting Frequency

At completion of specified activities as shown above under "Monitoring Action/Timing".

Noncompliance Sanction

No sanctions. Mitigation Measure 3.1.6-1 is a City responsibility.

3.1.7 PUBLIC SERVICES

Police Protection

Mitigation Measure 3.1.7.1

- a) The City of Hayward would fund the Department's staffing and equipment needs as demands for police services increase with Specific Plan buildout.
- b) Project plans should be submitted to the Police Department for comment on feasible design measures that would increase safety and reduce the demand for police services.

Monitoring Action/Timing

Preparation of concept plans, construction drawings and specifications per Specific Plan Development Guidelines.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.1.7-1.

Responsible Agency

City of Hayward, Department of Community and Economic Development in collaboration with the Police Department.

Monitoring Frequency

Ongoing per development of project concept plans, construction drawings and specifications.

Reporting Frequency

Ongoing per development of project concept plans, construction drawings and Specifications.

Noncompliance Sanction

No approval of construction plans and specifications.

Fire Services

Mitigation Measure 3.1.7-2

As a condition of Specific Plan approval the following measures will be implemented):

- a) All nonresidential structures will be equipped with appropriate automatic fire extinguishing sprinkler systems.
- b) Install Traffic preemption emitters at signalized intersections between responding

stations Nos. 4, 6, and 7 and the project site as identified by the Department. The Department will specify and purchase the appropriate firefighting apparatus and equipment. The project sponsor would be responsible for the full capital costs of installing traffic preemption emitters and the firefighting apparatus and equipment.

- c) A second access off Baumberg Avenue for the Weber property and across the at-grade railroad crossing on the Oliver Trust Properties will be provided and will be designed to support the Department's minimum requirement of 56,000 pounds.
- d) An earth filled railroad overpass that meets the weight, width, and height requirements for Fire Department emergency vehicle access will be provided over the railroad tracks.
- e) Secondary and emergency vehicle access will meet all Department requirements including being 20 feet in width and unobstructed, having an all weather driving surface, contain Department approved automatic electronic opening devices if gates are used, and roundabout accessible. In addition all public roadways, emergency vehicle access points and cul-de-sacs must meet Departmental turning radius standards with vertical clearances a minimum of 13 feet 6 inches.
- f) Fire hydrants will be spaced a maximum of 400 feet apart. Hydrants will provide 1500 gallons per minute at 20 points per square inch. The buried water supply pipe must meet NFPA 24 Chapter 8 "Private Fire Service Mains and their Appurtenances.

Monitoring Action/Timing

Preparation of concept plans, construction drawings and specifications per Specific Plan Development Guidelines.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.1.7-2.

Responsible Agency

City of Hayward, Department of Community and Economic Development in collaboration with the Fire Department.

Monitoring Frequency

Ongoing per development of project concept plans, construction drawings and specifications.

Reporting Frequency

Ongoing per development of project concept plans, construction drawings and Specifications.

Noncompliance Sanction

No approval of construction drawings and specifications.

Schools

Mitigation Measure 3.1.7-3

Prior to Tentative Tract Map approval, the City, School District, and project sponsors will, in accordance with the City's General Plan, need to agree to full facility mitigation for additional classroom and typical support facilities.

Monitoring Action/Timing

Agreement for the provision of specified school facilities prior to Specific Plan adoption.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.1.7-3.

Responsible Agency

City of Hayward, Department of Community and Economic Development in collaboration with the School District and project sponsors.

Monitoring Frequency

At completion of preparation of agreement, prior to adoption of Specific Plan.

Reporting Frequency

At completion of preparation of agreement, prior to adoption of Specific Plan.

Noncompliance Sanction

No adoption by the City of the Specific Plan.

Solid Waste

Mitigation Measure 3.1.7-4

Implement existing recycling programs at the City and County level to reduce solid waste generation and disposal.

Monitoring Action/Timing

Ongoing. City to ensure that Specific Plan area occupants have sufficient information and facilities so as to avail themselves to existing solid waste recycling programs.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.1.7-4.

Responsible Agency

Project sponsors and City Hayward Department of Community and Economic Development.

Monitoring Frequency

Ongoing. Prior to issuance of occupancy permits.

Reporting Frequency

Ongoing. After issuance of occupancy permits.

Noncompliance Sanction

No issuance of occupancy permits.

Mitigation Measure 3.1.7-5

There are two options for reducing solid waste construction impacts:

1. The City of Hayward Department of Community and Economic Development could determine the amount of construction material recycling that is presently feasible. The City could then require -- as a condition of any Specific Plan approval -- that the project sponsor achieve this level and sufficiently document it.
2. Or the City could require as a condition of Specific Plan approval that project sponsors consult with the City to secure information on construction recycling options and programs available to contractors and require construction contractors to provide construction waste recycling plans as part of their bids that they develop in consultation with the City. The plans would include the amount of recycling they would achieve for different materials, the methods they would use, and the measures they would use to document the accomplishment.

Monitoring Action/Timing

Preparation of construction specifications.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.1.7-5.

Responsible Agency

City of Hayward, Department of Community and Economic Development in collaboration with the project sponsors and their contractors.

Monitoring Frequency

At completion of preparing construction specifications.

Reporting Frequency

At completion of preparing construction specifications.

Noncompliance Sanction

Withholding of issuance of construction permits.

3.1.8 HAZARDOUS MATERIALS

Mitigation Measure 3.1.8-1

Prior to developing any individual parcel on the project site, an environmental site assessment should be performed to identify the likelihood of contamination of soil, groundwater, or existing buildings and other structures. If contamination is determined to be likely, material sampling will be conducted to determine the nature and scope of such contamination. On the basis of these investigations, a remediation plan will be developed that will specify measures to be taken to protect workers and the public from exposure to specific hazards. An appropriate environmental professional will certify that the proposed remediation plans will protect human health and be consistent with federal, state, and local requirements as implemented by agencies overseeing the clean-up effort. Prior to commencing work on contaminated sites, a site safety plan will be prepared and implemented in accordance with guidance from the National Institute for Occupational Safety and Health and the U.S. Occupational Safety and Health Administration as set forth in *Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities*.

Monitoring Action/Timing

Conduct environmental site assessment.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.1.8-1.

Responsible Agency

Project Sponsors in collaboration City of Hayward (Certified Unified Program Agency).

Monitoring Frequency

At completion of each site assessment.

Reporting Frequency

At completion of each site assessment.

Noncompliance Sanction

No issuance of grading permits.

Mitigation Measure 3.1.8-2

In accordance with Policy 3B of the *City of Hayward's Hazardous Waste Management Plan*, firms wishing to locate at the Specific Plan project site will demonstrate their commitment to the policy of hazardous materials use reduction as a condition for receiving any land use approvals or business permits. At the request of the City of Hayward, industries will be required to supplement initial designs with mandatory plans to further reduce the amount and toxicity of any hazardous materials required on site. Progress toward accomplishing this objective will be assessed as part of the permit renewal process.

Monitoring Action/Timing

Review of hazardous materials use reduction policy.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.1.8-2 to minimize hazardous materials storage and use.

Responsible Agency

City of Hayward Department of Community and Economic Development.

Monitoring Frequency

Prior to issuance of business permits.

Reporting Frequency

After issuance of business permits.

Noncompliance Sanction

No issuance of business permits.

Mitigation Measure 3.1.8-3

To protect new occupants from existing hazards of potential train derailments, new buildings along the railroad right-of-way should be constructed at least 100 feet from the railroad tracks. Pedestrian access to the railroad right-of-way should be restricted to the extent possible through the use of fences, walls, or other suitable barriers. Pedestrians could thereby be limited to crossings approved by the California Public Utilities Commission. Barriers should not interfere with the planned emergency vehicle access across the tracks.

Monitoring Action/Timing

Preparation of concept plans, construction drawings and specifications per Specific Plan Development Guidelines.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.1.8-3.

Responsible Agency

City of Hayward, Department of Community and Economic Development in collaboration with the project sponsors.

Monitoring Frequency

Ongoing per development of project concept plans, construction drawings and specifications.

Reporting Frequency

Ongoing per development of project concept plans, construction drawings and Specifications.

Noncompliance Sanction

No City approval of project concept plans, construction drawings and specifications.

3.1.9 CULTURAL RESOURCES

Mitigation Measure 3.1.9-1

Further archival and field study by an historian/archaeologist should be conducted. If buried archaeological resources are not discovered during a field survey, it may be recommended by the historian/archaeologist that an archaeologist monitor construction grading and excavation activities. If during construction, archaeological remains are discovered, work should be halted in the area of the find and the archaeologist consulted. Prompt evaluations could then be made regarding the significance/importance of the find and a course of action acceptable to all concerned parties could then be adopted.

Should archaeological resources be discovered during construction operations, development related impacts to important prehistoric archaeological sites could be mitigated by the following alternatives.

1. Avoidance of archaeological sites through modification of development plans that would allow for the preservation of the resources. Incorporation of site locations into protected open space or parklands would serve this purpose.
2. Covering or "capping" sites with a protective layer of fill. This could be a

very good way of mitigating potential impacts in situations where public access may be increased as a result of development. Archaeological monitoring during the filling process would be recommended.

3. In circumstances where archaeological deposits cannot be preserved through avoidance or capping, data recovery through excavation would be the recommended plan. This measure would consist of excavating those portions of the sites that would be adversely impacted. The work should be accomplished within the context of a detailed research design and in accordance with current professional standards. The program should result in the extraction of sufficient volumes of archaeological data so that important regional research considerations can be addressed. The excavations should be accomplished by qualified professionals and detailed technical reports should result.

All such procedures should follow the CEQA Guidelines, contained in Appendix K. Compliance with the following State laws regarding impacts to prehistoric Native American burials should be strictly enforced.

- The Health and Safety Code Section (b) states: that in the event of a discovery of human remains, all work is to stop and the County Coroner is to be called.
- Public Resources Code Section 5097.98 addresses the handling of archaeological remains that have been identified as Native American.

Monitoring Action/Timing

Archival and field study for cultural resources, and then ongoing during construction if resources are found.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.1.9-1.

Responsible Agency

Project sponsors in collaboration with the City of Hayward Department of Community and Economic Development.

Monitoring Frequency

Prior to issuance of grading and construction permits. Ongoing during construction as determined necessary.

Reporting Frequency

Prior to issuance of grading and construction permits. Ongoing during construction as determined necessary.

Noncompliance Sanction

No City issuance of grading and construction permits. Stop work order during construction.

3.2.1 GEOLOGY, SOILS AND SEISMICITY

Mitigation Measure 3.2.1-1

Incorporate current seismic-restraint criteria in the design of excavations, foundations and structures for the project, using updated guidelines from the 1997 Uniform Building code, as appropriate. Implementation of this mitigation measure, as described below, would reduce seismically induced ground shaking damage impacts to an insignificant level. (I)

- A. The minimum seismic-resistant design standards for all proposed facilities shall conform to the CBC Seismic Zone 4 Standards and applicable portions of the City's policies and ordinances.
- B. If additional seismic-resistant earthwork or construction design criteria are recommended by the geotechnical investigations, they shall be incorporated as necessary, based on the site-specific recommendations of California-registered geotechnical and structural engineering professionals, recommended in cooperation with a California Certified Engineering Geologist.
- C. During site preparation, the registered geotechnical professional shall be on the site to supervise implementation of the recommended criteria.
- D. The geotechnical consultant shall prepare an "as built" map/report, to be filed with the City, showing details of the site geology, the location and type of seismic-restraint facilities, and documenting the following requirements, as appropriate.
 - 1. Engineering analyses shall demonstrate satisfactory performance of existing or re-compacted alluvium and existing or new fill where they form part or all of the support for structures.
 - 2. Access, foundations and underground utilities in fill or alluvium shall be designed to accommodate settlement or compaction estimated by the site-specific investigations of the geotechnical consultant.

Monitoring Action/Timing

Preparation of construction drawings and specifications.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.2.1-1.

Responsible Agency

City of Hayward, Department of Public Works in collaboration with the project sponsors.

Monitoring Frequency

Ongoing per development of project construction drawings and specifications.

Reporting Frequency

Ongoing per development of project construction drawings and specifications.

Noncompliance Sanction

No City approval of construction drawings and specifications.

Mitigation Measure 3.2.1-2

Incorporate seismic-restraint criteria in the design of excavations, foundations and structures for the project. Implementation of this mitigation measure would be as described in Mitigation Measure 3.2.1-1.

Mitigation Measure 3.2.1-3

Require site-specific soil suitability analysis and stabilization procedures, and design criteria for foundations, as recommended by a California-registered soil engineer during the design phase of the Plan Area.

- A. The minimum static ground failure design standards for all proposed facilities shall conform to City Building Code Standards and applicable portions of the City's policies and ordinances.
- B. During the design phase for the Specific Plan Area, the developer's registered soil engineering consultant shall provide documentation to the City that:
 - 1. site-specific soil suitability analyses has been conducted in the area of the proposed foundation to establish the design criteria for appropriate foundation type and support, and
 - 2. the recommended criteria have been incorporated in the design of foundation.

- C. During grading for these sites, the registered soils professional shall be on the site:
 - 1. to observe areas of potential soil unsuitability,
 - 2. to supervise the implementation of soil remediation programs, and
 - 3. to verify final soil conditions prior to setting the foundations.
- D. The registered soils engineering consultant shall prepare an "as built" map, to be filed with the City, showing details of the site soils, the location of foundations, sub-drains and clean-outs, the results of suitability analyses and compaction tests.

Monitoring Action/Timing

Preparation of construction drawings and specifications.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.2.1-3.

Responsible Agency

City of Hayward, Department of Public Works in collaboration with the project sponsors.

Monitoring Frequency

Ongoing per development of project construction drawings and specifications, and during project construction as required. As-builts to be prepared prior to occupancy.

Reporting Frequency

Ongoing per development of project construction drawings and specifications, and during project construction as required.

Noncompliance Sanction

No City approval of construction drawings and specifications. Stop work order during construction if needed. No occupancy permits issued without as-built drawings.

Mitigation Measure 3.2.1-4

If grading or construction are to occur during the wet season, require an erosion and sediment transport control plan, designed by an erosion control professional, or landscape architect or civil engineer specializing in erosion control, that would meet the following objectives for the grading and construction period of the project.

- A. The erosion and sediment transport control plan shall be submitted, reviewed,

implemented and inspected as part of the approval process for the grading plans for each project.

B. The plan shall be designed by the developers' erosion control consultant, using concepts similar to those developed by the Association of Bay Area Governments, as appropriate, based on the specific erosion and sediment transport control needs of each area in which grading and construction is to occur. The possible methods are not necessarily limited to the following items.

- Confine grading and activities related to grading (demolition, construction, preparation and use of equipment and material storage areas (staging areas), preparation of access roads,) to the dry season, whenever possible.
- If grading or activities related to grading need to be scheduled for the wet season, ensure that structural erosion and sediment transport control measures are ready for implementation prior to the onset of the first major storm of the season.
- Locate staging areas outside major drainage ways.
- Keep the lengths and gradients of constructed slopes (cut or fill) as low as possible.
- Discharge grading and construction runoff into small drainages at frequent intervals to avoid buildup of large potentially erosive flows.
- Prevent runoff from flowing over unprotected slopes.
- Keep disturbed areas (areas of grading and related activities) to the minimum necessary for demolition or construction.
- Keep runoff away from disturbed areas during grading and related activities.
- Stabilize disturbed areas as quickly as possible, either by vegetative or mechanical methods.
- Direct runoff over vegetated areas prior to discharge into public storm drainage systems, whenever possible.
- Trap sediment before it leaves the site with such techniques as check dams, sediment ponds, or siltation fences.
- Make the contractor responsible for the removal and disposal of all

sedimentation on-site or off-site, that is generated by grading and related activities of the project.

- Use landscaping and grading methods that lower the potential for downstream sedimentation. Modified drainage patterns, longer flow paths, encouraging infiltration into the ground, and slower storm-water conveyance velocities are examples of effective methods.
 - Control landscaping activities carefully with regard to the application of fertilizers, herbicides, pesticides or other hazardous substances. Provide proper instruction to all landscaping personnel on the construction team.
- C. During the installation of the erosion and sediment transport control structures, the erosion control professional shall be on the site to supervise the implementation of the designs, and the maintenance of the facilities throughout the demolition, grading and construction period.
- D. The erosion control professional shall prepare an "as built" erosion and sediment control facility map, to be filed with the City, showing details of the permanent elements of the plan and providing an operating and maintenance schedule throughout the operational period of the project.

Monitoring Action/Timing

Preparation of construction drawings and specifications.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.2.1-4.

Responsible Agency

City of Hayward, Department of Public Works in collaboration with the project sponsors.

Monitoring Frequency

At completion of preparation of project construction drawings and specifications. Periodic site reviews during the construction period.

Reporting Frequency

At completion of preparation of project construction drawings and specifications. After periodic site reviews during construction.

Noncompliance Sanction

No City approval of construction drawings and specifications. Stop work order during construction.

3.2.2 HYDROLOGY AND WATER QUALITY

Mitigation Measure 3.2.2-1

Incorporate runoff control design in the drainage collection system for the project.

- (a) The project engineer would perform detailed, site-specific hydrologic and hydraulic analyses for the proposed development areas, to validate the drainage calculations for the Specific Plan Area as a whole. The analyses would be in conformance with City of Hayward and ACFCO standards for the 100-year storm, would quantify the proposed development area's increased stormwater runoff volumes, and would quantify the effect on the capacity of the existing drainage facilities, including the levees along Old Alameda Creek.
- (b) The proposed additions to the storm-drainage system would be designed to accommodate the anticipated flows from the Specific Plan Area. The project engineer would include facilities in the storm-drain infrastructure that would avoid increasing the risk of offsite flooding or increasing the area of offsite 100-year floodplains. Such facilities could include detention or storage structures.
- (c) Facilities to accommodate the additional volume of stormwater runoff would be designed, reviewed, and incorporated into development prior to completion of the permitting process for this project. Specific structural mitigation measures that could be included in the facilities include detention basins, energy reducers, and oversized pipes and catch-basins that could act as temporary storage facilities for stormwater runoff.

Monitoring Action/Timing

Preparation of construction drawings and specifications.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.2.2-1.

Responsible Agency

City of Hayward, Department of Public Works in collaboration with the project sponsors.

Monitoring Frequency

At completion of preparation of project construction drawings and specifications.

Reporting Frequency

At completion of preparation of project construction drawings and specifications.

Noncompliance Sanction

No City approval of construction drawings and specifications.

Mitigation Measure 3.2.2-2

- (a) Construction should be scheduled for the dry season.
- (b) The project will be subject to an NPDES permit from the RWQCB. This permit requires that the applicant develop a Storm Water Pollution Prevention Plan. The permit requirements of the Regional Board would be satisfied prior to granting of a building permit by the City of Hayward.
- (c) A soil erosion and sedimentation control plan would be submitted to the City of Hayward by the applicant for individual development sites proposed under the Specific Plan prior to grading. This plan may include, but would not be limited to, the erosion control methods outlined in Mitigation Measure 3.2.1-4 (soil erosion control).

Monitoring Action/Timing

Preparation of construction drawings and specifications to include erosion control

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.2.2-2.

Responsible Agency

City of Hayward, Department of Public Works in collaboration with the project sponsors.

Monitoring Frequency

At completion of preparation of project construction drawings and specifications. Periodic site reviews during the construction period.

Reporting Frequency

At completion of preparation of project construction drawings and specifications. After periodic site reviews during construction.

Noncompliance Sanction

No City approval of construction drawings and specifications. Stop work order during construction.

Mitigation Measure 3.2.2-3

Easily cleanable catch-basins, debris screens, and grease separators or similar water quality protection devices should be installed in the on-site drainage facilities. Maintenance of the facilities could be ensured through in-lieu fees paid to the City, or the establishment of homeowner associations.

Monitoring Action/Timing

Preparation of construction drawings and specifications.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.2.2-3.

Responsible Agency

City of Hayward, Department of Public Works in collaboration with the project sponsors.

Monitoring Frequency

At completion of preparation of project construction drawings and specifications. Periodic site reviews during the construction period.

Reporting Frequency

At completion of preparation of project construction drawings and specifications. After periodic site reviews during construction.

Noncompliance Sanction

No City approval of construction drawings and specifications. Stop work order during construction.

Mitigation Measures 3.2.2-4

Project construction sites within the Specific Plan Area in areas of high groundwater shall submit a geotechnical report which designates specific groundwater conditions and subdrain requirements and incorporates them in the project design.

Monitoring Action/Timing

Preparation of construction drawings and specifications.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.2.2-4.

Responsible Agency

City of Hayward, Department of Public Works in collaboration with the project sponsors.

Monitoring Frequency

At completion of preparation of project construction drawings and specifications.

Reporting Frequency

At completion of preparation of project construction drawings and specifications.

Noncompliance Sanction

No City approval of construction drawings and specifications.

Mitigation Measure 3.2.2-5

- (a) Sufficient fill would be added to bring the lowest occupied floor of each building at least one foot above the estimated 100-year flood elevation, and to raise levees and flood walls protecting the residential area to provide at least three feet of freeboard during the 100-year flood event (proposed as part of the project). Design of the flood wall should be coordinated with design of the noise wall (see Section 3.2.5, *Noise*), so as to integrate both walls into a single structure.
- (b) Sufficient fill would be added to access routes to and from the residential areas to allow safe passage during the 15-year inundation (proposed as part of the project).
- (c) Minor storm drainage facilities would be sized, at least, for the 10-year flood event (proposed as part of the project).
- (d) The City would require the preparation of a flood plain analysis to evaluate alterations in floodwater characteristics, including depth, extent and velocity, caused by the addition of fill, and stipulating measures (such as diversion of flood waters or raising of levees) to protect adjacent occupied areas.
- (e) The final design for the fill and flood protection measures would be included in the Plans and Specifications for the project.

Monitoring Action/Timing

Preparation of construction drawings and specifications.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.2.2-5.

Responsible Agency

City of Hayward, Department of Public Works in collaboration with the project sponsors.

Monitoring Frequency

At completion of preparation of project construction drawings and specifications. Periodic site reviews during the construction period.

Reporting Frequency

At completion of preparation of project construction drawings and specifications. After periodic site reviews during construction.

Noncompliance Sanction

No City approval of construction drawings and specifications. Stop work order during construction.

3.2.3 BIOLOGICAL RESOURCES

Mitigation Measure 3.2.3-1

The loss of 1.7 acres of wetland on the Weber property shall be replaced by removing or excavating at least 1.7 acres of berms or old levees within the wetland preserve area on the southern end of the Weber property. The replacement of only 1.7 acres of wetland (a 1:1 ratio) is the minimum requirement based on State and Federal policies of "no net loss" of wetland acreage or value. Replacement ratios for mitigation habitat area to impacted habitat area are often higher than 1:1. For example, the U.S. Fish and Wildlife Service recently required creation of 16.38 acres of wetland to mitigate for the loss of 0.9 acres of salt marsh habitat occupied by the endangered salt marsh harvest mouse, an 18:1 ratio (Redwood Shores Levee Rehabilitation Project Biological Opinion 8/5/90).

More typical mitigation ratios are in the 1:1 to 3:1 range, such as the 1.5:1 ratio required for losses of wetlands and the 3:1 ratio required for loss of riparian forest on the Sisquoc River Aggregate Mining Specific Plan (DEIR 6/96). Variations in ratios reflect differences in habitat value of areas impacted, temporal losses of habitat value reflecting time required for replacement habitat to mature, and other factors. Because the wetlands in the Specific Plan area are of relatively low quality and can be replaced with habitats supporting mature wetland vegetation within one to two years, lower ratios would be adequate for mitigation purposes. To justify lower replacement ratios, however, the following measures should be implemented prior to development:

1. The remaining wetlands should be enhanced in value by removing existing drainage pipes and channels, adding water retention structures to allow for greater areas and periods of inundation, and planting native species with control of non-native species. These habitat enhancement measures would help provide offsets for losses of habitat values.

2. The replacement of wetland area and enhancement of existing wetlands should be conducted prior to disturbance of wetlands on the project site to minimize temporal losses.

Monitoring Action/Timing

Preparation of construction drawings and specifications to include wetlands/habitat replacement, and site inspections during construction.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.2.3-1.

Responsible Agency

City of Hayward, Department of Public Works and Department of Community and Economic Development in collaboration with the project sponsors, U.S. Fish and Wildlife Service and California Department of Fish and Game.

Monitoring Frequency

At completion of preparation of project construction drawings and specifications. Periodic site inspections during the construction period.

Reporting Frequency

At completion of preparation of project construction drawings and specifications. After periodic site inspections during construction.

Noncompliance Sanction

No City approval of construction drawings and specifications. Stop work order during construction.

Mitigation Measure 3.2.3-2

Before construction begins on the Weber property, an eight foot high masonry block wall should be installed along the southern extent of the industrial area to prevent trash from blowing into the wetlands. This wall would also reduce the visual contact between humans and wildlife.

Buildings should be designed such that the building perimeter would be along the boundary adjacent to the wetland. This design would serve two purposes: 1) on-site activities would occur farther from the wetland habitat, and 2) the buildings would act as a visual and acoustic shield between the human activity and the wetland habitat. No setbacks would be required with this measure.

Leases should have and property sales should include deed restrictions prohibiting cats or

dogs from being on the premises.

The industrial sites should be graded such that stormwater drains into local sewers and not into the wetlands or the channels on the property. Earthen berms should be installed where appropriate to prevent runoff and accidental spills from draining into the wetlands.

In order to reduce the stormwater system capacity and to increase water volume to the wetlands, the roofs of the buildings may be designed to drain directly into the wetlands, provided the water does not come in contact with roadways, parking areas, loading areas, storage areas or stormwater from such areas.

One large educational sign should be placed in a prominent and visible place explaining the value of the adjacent biotic habitats and methods for protecting these resource. Catch basins that do not drain into sewers should be labeled to indicate that they drain into the San Francisco bay.

Monitoring Action/Timing

Preparation of construction drawings and specifications and lease agreements. Periodic site inspections during construction.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.2.3-2.

Responsible Agency

City of Hayward, Department of Public Works and Department of Community and Economic Development in collaboration with the project sponsors, U.S. Fish and Wildlife Service and California Department of Fish and Game.

Monitoring Frequency

At completion of preparation of project construction drawings and specifications, and lease agreements. Periodic site reviews during the construction period.

Reporting Frequency

At completion of preparation of project construction drawings and specifications, and lease agreements. After periodic site reviews during construction.

Noncompliance Sanction

No City approval of construction drawings and specifications. Stop work order during construction.

Mitigation Measure 3.2.3-3

The loss of 0.03 acres of wetlands on the Oliver property should be mitigated by the creation of at least that much area of additional wetland within the 100 foot buffer around the Oliver property. The 0.33 acres of freshwater marsh habitat (and one willow tree) occurs on the periphery of the property and could possibly be avoided. If avoidance is not possible, it should also be mitigated by replacement within the 100-foot buffer zone. The exact mitigation ratio and design will need to be developed with and approved by the relevant agencies, including the United States Fish and Wildlife Service, and California Department of Fish and Game.

Monitoring Action/Timing

Preparation of construction drawings and specifications, periodic site inspections during construction.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.2.3-3.

Responsible Agency

City of Hayward, Department of Public Works and Department of Community and Economic Development in collaboration with the project sponsors, U.S. Fish and Wildlife Service, and California Department of Fish and Game .

Monitoring Frequency

At completion of preparation of project construction drawings and specifications. Periodic site inspections during the construction period.

Reporting Frequency

At completion of preparation of project construction drawings and specifications. After periodic site reviews during site inspections.

Noncompliance Sanction

No City approval of construction drawings and specifications. Stop work order during construction.

Mitigation Measure 3.2.3-4

A 100-foot wide buffer zone is proposed to be retained between residential areas and all adjacent habitat WCB lands to the West and wetland to the North. This area should be landscaped with screening native vegetation, primarily native grasses and shrubs.

A 50 foot wide channel within all the buffer zones should be created to serve as a water barrier. The channel within the buffer zone should be designed to allow circulation for water quality and mosquito abatement. There should be no bridges or structures to allow the passage of predatory animals. Water levels should be maintained at a high level to discourage

cats and foxes from leaping across.

Language should be included into the community Codes, Covenants and Restrictions to require that all pets be restrained at all times, including cats.

Trash containers should be emptied as needed, and trash should be picked up within the buffer zone on a regular basis. Because urban runoff can contain fertilizers and toxins which could affect the water quality within the channels, storm water from the residential area should drain into the storm sewers and not into the wetland channels. Fertilization of these channels could result in odoriferous alga blooms.

Education is one of the best methods to reduce residential related impacts. The Bay trail within the buffer area should have educational signs indicating the significance of the habitat area. The channel and buffer treatment will need to be designed with and approved by the United States Fish and Wildlife Service, and the California Department of Fish and Game.

Monitoring Action/Timing

Preparation of construction drawings and specifications and lease agreements. Periodic site inspections during construction.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.2.3-4.

Responsible Agency

City of Hayward, Department of Public Works and Department of Community and Economic Development in collaboration with the project sponsors, U.S. Fish and Wildlife Service and California Department of Fish and Game.

Monitoring Frequency

At completion of preparation of project construction drawings and specifications, and Codes, Covenants and Restrictions. Periodic site reviews during the construction period.

Reporting Frequency

At completion of preparation of project construction drawings and specifications, and Codes, Covenants and Restrictions. After periodic site reviews during construction.

Noncompliance Sanction

No City approval of construction drawings and specifications. Stop work order during construction.

Based on preliminary discussions with representatives of the California Department of Fish and Game, the following (edited) statement has been provided by individuals representing the Oliver Trust concerning the creation of buffers between the Oliver West parcel and adjacent wetland/Water Conservation Board (WCB) parcels.

“Buffer Zone. The proposed residential development on the Oliver West parcel has an 18 acre portion of the Weber property identified as salt marsh harvest mouse habitat adjacent to its northern boundary and the WCB property planned as an extension of the Bay Refuge area adjacent to its westerly boundary. In order to buffer the potential impacts on wildlife utilizing these adjacent areas, a 100 foot wide buffer zone totaling approximately 10.5 acres is proposed to be installed on the property’s northerly and westerly boundaries as part of the subdivision improvements. Discussions with the State of California Department of Fish and Game indicate that a water area at least three feet deep and a minimum of thirty feet wide is the most effective way to provide a barrier between the properties preventing domestic animals from traveling into the open space areas (see Figure 3.2.3-2). Conceptually, it is proposed that the outboard forty foot wide portion of the buffer area be utilized for the water feature. The remaining sixty feet would be utilized for an extension of the Bay Trail (20 feet) around the interior of the buffer zone and for the side slopes between the existing ground elevations (1 to 3.5 feet above sea level) and the finished elevations of the residential neighborhood (a minimum of eight feet above sea level). The water feature would be dug to a depth of approximately four feet below sea level and its exterior side walls would have an average elevation of three feet above sea level. Salt water would flow to the water feature in the buffer area via pipes installed from the ACFCD A-2 channel and Old Alameda Creek at an elevation one foot below sea level near the lower reach of the flow line of those respective channels. This approach would ensure that the water feature would have a minimum of three feet of water in it at all times but could have as much as 7 feet in it during periods of high tide. The hydraulics of this approach would enable the water feature to benefit from tidal action on a regular basis. The remainder of the buffer zone would be landscaped largely with drought resistant native grasses. It is proposed that a Homeowner’s Association be formed encumbering the Oliver West residential property that would own and maintain the buffer zone.”

Mitigation Measure 3.2.3-5

The burrowing owl habitat is located within the 100-foot-wide buffer zone proposed in Mitigation Measure 3.2.3-4. Incorporation of the burrow within that zone and avoidance of owl disturbance during construction of a buffer water channel would reduce the impact. To mitigate for disturbances within 160 feet of the burrow, owl burrows will be enhanced at the required ratio of 2:1 by either creating new burrows or enhancing existing unsuitable burrows following CDFG guidelines. Enhancement will be conducted at the outer edge of the 100-foot buffer strip. While this location will be approximately 90 to 100 feet away from

development, rather than the required 160 feet away, the location is suitable since other adjacent properties will remain undeveloped.

Burrows enhancement will follow designs suggested in CDFG guidelines. A monitoring plan, including mitigation success criteria, will be submitted to CDFG prior to implementation, and an annual report will also be submitted to CDFG. Fill material will not be placed on the 100-foot-wide buffer zone. While the burrow on the site is not expected to be disturbed by construction activities, passive relocation is expected to be necessary due to the construction of a moat to protect wildlife from domestic animals. Passive relocation will be conducted following CDFG guidelines, and occupied burrows will not be disturbed during the nesting season of February 1 through August 31 unless authorized by the CDFG, in accordance with the CDFG guidelines.

Any upland areas within the entire 100-foot-wide buffer strip along the Oliver West property boundary should be maintained as appropriate burrowing owl foraging habitat. These areas shall be planted with low-growing annual grasses and mowed (not disced) annually to maintain an open area where burrowing owls can easily forage. No more than 30% cover by shrubs or herbaceous species higher than 3 feet should be allowed to become established on the strip. No landscaping or ornamental vegetation shall be planted within the buffer zone. Any undeveloped upland area on the south and southeast side of the Oliver West property should also be planted and maintained following these guidelines.

In compliance with CDFG's burrowing owl survey protocol, a preconstruction survey will also be conducted within 30 days prior to the beginning of construction activities since owls often change location and could have taken residence on the site prior to construction.

Monitoring Action/Timing

Preparation of construction drawings and specifications and lease agreements. Periodic site inspections during construction.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.2.3-5.

Responsible Agency

City of Hayward, Department of Public Works and Department of Community and Economic Development in collaboration with the project sponsors, U.S. Fish and Wildlife Service and California Department of Fish and Game.

Monitoring Frequency

At completion of preparation of project construction drawings and specifications. Periodic site reviews during the construction period.

Reporting Frequency

At completion of preparation of project construction drawings and specifications. After periodic site reviews during construction.

Noncompliance Sanction

No City approval of construction drawings and specifications. Stop work order during construction.

3.2.4 AIR QUALITY

Mitigation Measure 3.2.4-1

Dust emissions from construction-related activities can be greatly reduced by implementing control measures. The Bay Area Air Quality Management District has developed feasible control measures for construction emissions of PM₁₀, (particulates).

Basic Control Measures. The following controls should be implemented at all construction sites:

- Water all active construction areas at least twice daily.
- Cover all trucks hauling soil, sand, and other loose materials *or* require all trucks to maintain at least two feet of freeboard.
- Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
- Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.

Enhanced Control Measures. The following measures shall be implemented at all constructions sites greater than four acres in area:

- All "Basic" control measures listed above.
- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
- Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.)

- Limit traffic speeds on unpaved roads to 15 mph.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Replant vegetation in disturbed areas as quickly as possible.

Optional Control Measures. The following control measures shall be implemented at active large construction sites that are located near residences along Bridge Road, Baumberg Avenue, or Old Arden Road or any other sensitive receptors:

- Install wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the site.
- Install wind breaks, or plant trees/vegetative wind breaks at windward side(s) of construction areas if conditions warrant.
- Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph.
- Limit the area subject to excavation, grading and other construction activity at any one time.

Monitoring Action/Timing

Preparation of construction specifications. Periodic site inspections during construction.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.2.4-1.

Responsible Agency

City of Hayward, Department of Public Works in collaboration with the project sponsors.

Monitoring Frequency

At completion of preparation of project construction specifications. Periodic site reviews during the construction period.

Reporting Frequency

At completion of preparation of project construction specifications. After periodic site reviews during construction.

Noncompliance Sanction

No City approval of construction specifications. Stop work order during construction.

3.2.5 NOISE

Mitigation Measure 3.2.5-1

The following mitigation measures address the time of construction and devices to reduce construction equipment noise.

- To minimize construction noise impacts upon nearby residents, limit construction hours to between 7:00 AM and 7:00 PM on weekdays and prohibit all construction work on weekends. Any work outside of these hours should require a special permit from the City of Hayward based on compelling reasons.
- Construction equipment should be properly outfitted and maintained with noise reduction devices to minimize construction-generated noise.
- The contractor should locate stationary noise sources away from residents in developed areas and require use of acoustic shielding with such equipment when feasible and appropriate.

Monitoring Action/Timing

Preparation of construction specifications. Periodic site inspections during construction.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.2.5-1.

Responsible Agency

City of Hayward, Department of Public Works in collaboration with the project sponsors and construction contractors.

Monitoring Frequency

At completion of preparation of project construction specifications. Periodic site reviews during the construction period.

Reporting Frequency

At completion of preparation of project construction specifications. After periodic site reviews during construction.

Noncompliance Sanction

No City approval of construction specifications. Stop work order during construction.

Mitigation Measure 3.2.5-2

A noise performance standard shall be established for the Weber parcel industrial/residential boundary. Hourly average noise levels generated by new light industrial uses shall not exceed an hourly average noise level (L_{eq}) of 55 dBA during the daytime and 50 dBA during the nighttime as measured at any common residential property boundary. Each new light industrial land use proposal shall be evaluated to determine the noise levels that are expected from the land use. Noise control treatments shall be incorporated into the design of the project that would be expected to result in noise levels consistent with the noise performance standards.

Monitoring Action/Timing

Preparation of construction drawings and specifications, and lease agreements.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.2.5-2.

Responsible Agency

City of Hayward, Department of Public Works in collaboration with the project sponsors.

Monitoring Frequency

At completion of preparation of project construction drawings and specifications, and lease agreements.

Reporting Frequency

At completion of preparation of project construction drawings and specifications, and lease agreements.

Noncompliance Sanction

No City approval of construction drawings and specifications. No granting of occupancy permits.

Mitigation Measure 3.2.5-3

The following mitigation measures would reduce the impact of train noise to an insignificant level:

- With respect to the residential outdoor environment, construct a soundwall along the residential property boundary common to the railroad right-of-way and extend it along the north and south property boundaries for a distance of about 150 feet. The soundwall should be constructed of masonry blocks, precast masonry panels, or concrete panels and should be airtight over the surface and at the base of the wall.

The wall should be approximately 8 to 10 feet high as measured above the final building pad elevations. The final height of the soundwall would depend upon the grading plans and the relationship of the pad elevations to the railroad track elevations. The 8- to 10-foot height would be appropriate if the pad elevations and base of wall elevations are approximately at-grade with the railroad track elevation. Design of the noise wall should be coordinated with the design of the flood wall (see Section 3.2.2, *Hydrology and Water Quality*), so as to integrate both walls into a single structure.

- With respect to the residential indoor environment, pursuant to the requirements of the Noise Element of the General Plan, prepare a detailed noise analysis during the design phase for the houses which identifies the noise control treatments necessary to achieve an L_{dn} of 45 dBA or less inside the new houses. Further require that the analysis shall demonstrate how single-event noise levels from individual railroad trains will be controlled so as not to exceed a maximum instantaneous noise level (L_{max}) of 50 dBA in bedrooms and 55 dBA in other noise sensitive rooms, such as living rooms, dining rooms, kitchens, etc. Noise control treatments, such as sound rated windows, doors, wall constructions, and forced air ventilation (so windows may be closed), if properly specified, would be able to achieve these noise limits.

Monitoring Action/Timing

Preparation of construction drawings and specifications. Periodic site inspections during construction.

Monitoring Evaluation Criteria/Performance Standards

Conformance with Mitigation Measure 3.2.5-3.

Responsible Agency

City of Hayward, Department of Public Works in collaboration with the project sponsors.

Monitoring Frequency

At completion of preparation of project construction drawings and specifications. Periodic site reviews during the construction period.

Reporting Frequency

At completion of preparation of project construction drawings and specifications. After periodic site reviews during construction.

Noncompliance Sanction

No City approval of construction drawings and specifications. Stop work order during construction.

REPORTING

PROCEDURE

The suggested forms on the following pages are provided to establish a system of mitigation monitoring and reporting. The forms are developed for the following purposes:

- (1) To allow for transferring mitigation measures as established in the Program above in recognition of subsequent stages of project planning and construction activities.
- (2) To track each mitigation measure throughout the construction process to insure implementation.
- (3) To document each mitigation measure conformance with program objectives upon the completion of construction.
- (4) To tailor the mitigation monitoring program to the requirements of the project. To avoid over-simplifying or over-complicating the monitoring effort.
- (5) To evaluate the effectiveness of in-place mitigation measures and implement revisions as appropriate to insure the ongoing effectiveness of each mitigation measure.
- (6) To develop remedial actions as required to insure mitigation effectiveness.
- (7) To maintain complete records where substantiation of mitigation monitoring is warranted.

MITIGATION MONITORING REPORT

The Mitigation Monitoring Report form serves as a cover sheet for a project mitigation report. This form identifies the project, project sponsor and provides a checklist of the subject areas where mitigation monitoring and reporting is required for a project. This form provides an overview of the general aspects of the monitoring program.

MITIGATION MONITORING COMPLIANCE

The Mitigation Monitoring Compliance Report form identifies whether the mitigation is derived from an EIR or Negative Declaration. This form also provides space for the statement of a mitigation

measure, the performance standards for mitigation compliance, details about site inspections and whether the mitigation measure when implemented is acceptable or unacceptable. The form also allows for specifying who is responsible for determining compliance and the timing (scheduling) for compliance determination.

A separate form is used for each mitigation measure. If the implemented mitigation measure is not achieving its intended purpose, or was not success fully implemented, the specific actions required for compliance may be noted on the form.

MITIGATION MONITORING VERIFICATION

The Mitigation Monitoring Verification form provides for a statement of findings that a previously unacceptable mitigation attempt when modified through further action, is in fact, acceptable as modified or altered. This form is filled out after the specific actions for mitigation compliance have been completed and are found acceptable. The completed package with a memorandum may then be submitted for City approval at the conclusion of the mitigation monitoring and reporting program for the Specific Plan project.

SOUTH OF ROUTE 92 SPECIFIC PLAN MITIGATION MONITORING REPORT

Project: _____
Address _____
Applicant: _____
Name _____
Address _____
File No. _____

Mitigation Monitoring Summary

Subject	<u>Mitigation Required</u>		<u>* Mitigation Completed and Acceptable</u>	
	Yes	No	Yes	Date
Land Use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Traffic/Parking	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Public Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Utilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Energy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Hazardous Materials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Visual Quality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Cultural Resources	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Soils, Geology	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Drainage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Water Quality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Vegetation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Wildlife	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Air Quality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Noise	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Other (Specify)_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

* See Compliance Report,
Sheet _____.

SOUTH OF ROUTE 92 SPECIFIC PLAN MITIGATION MONITORING COMPLIANCE REPORT

File No.: _____

Project: _____ A.P. No. _____

Subject Category: _____

☐ EIR Sch. No. _____ ☐ Neg. Dec. _____

Type of Mitigation: ☐ Project Design ☐ Project Ongoing ☐ Cumulative

Mitigation Statement:

Mitigation Performance Standard:

Responsibility to Implement Mitigation: _____

Responsibility to Assess Compliance: _____

Date of Inspection: _____

By: _____
Consultant
County

Compliance: ☐ Acceptable _____ ☐ Unacceptable _____
(Further Action Required - see below)

Action Required for Compliance (Describe):

(Attach Mitigation Monitoring Verification Report)

Responsibility for Compliance Determination: _____

Timing for Compliance Determination: _____

Signed: _____ Date: _____

Sheet No. _____

SOUTH OF ROUTE 92 SPECIFIC PLAN MITIGATION MONITORING VERIFICATION

File Date: _____

Project: _____ A.P. No. _____

Subject Category: _____

Date of Inspection: _____

By: _____

Consultant

City

Verification of Findings (To be filled out after Action Required for Compliance is completed).

Signed: _____ Date: _____

Attach to Sheet No. _____